

ISLAM & POLITICS

ISLAMIC POLITICAL PRINCIPLES &
THEIR PRACTICAL IMPLEMENTATION

A translation of
Islām awr Siyāsī Nazariyāt

MUFTI MUHAMMAD TAQI USMANI

Foreword by
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PREFACE

In the Name of Allah, the Most Merciful and Compassionate. I bear witness that there is no god but Allah, alone and without partners, and that Muhammad is His servant and Messenger. I invoke the blessings of Allah and peace upon his final Messenger, Muhammad, and his Family and Companions, along with all those who follow them in goodness till the Day of Rising.

As a complete and comprehensive religion, Islam provides its followers with guidance in all aspects of life. Politics and governance are no exception, and yet they are often thought to be areas which Islamic teachings do not cover. With a view to dispelling this misconception, and to elucidating the correct Islamic perspective on politics and related issues, a series of lectures in Urdu was delivered in Darul Uloom Karachi over a two-week period in 1416 AH/1995–6 CE. These lectures were then transcribed and edited before being published under the title *Islām awr Siyāsī Nazariyāt* ('Islam and Political Theories'). By the grace and mercy of Allah, this publication proved very beneficial for Urdu-speaking readers, and it was subsequently translated into Arabic. It was then thought appropriate to translate the second half of the book, which focuses on politics from an Islamic perspective, for the benefit of English-speaking readers. The result is the book which you are now reading.

I am grateful to Maulana Abdullah Memon and Maulana Muhammad Muzzammil Kapadia, both of whom worked tirelessly to transcribe and edit these lectures for the original Urdu publication. Likewise, I extend my gratitude to Sister Zehra Baintner, whose translation of the work I have had the opportunity to check in a number of places and have found to be an accurate rendering. Moreover, I would like to thank HRH Prince Ghazi, who has kindly written a foreword to this translation, Dr Muhammad Isa

Waley for his meticulous editing of the text, and finally Turath Publishing for publishing this with great care.

May Allah reward all those who have contributed in any way to this publication, and may He grace it with acceptance and make it beneficial for all. *Āmin*.

MUHAMMED TAQI USMANI

Karachi, February 2018

FOREWORD

In the Name of God, the Compassionate, the Merciful. Praise be to God. May Peace and blessings be upon the Messenger of God

Dear Reader,

Peace be upon you—*Al-Salaamu 'alaykum*,

Since you have picked up this book, it is likely you had the same frustrating experience as I have. I was searching for a book like this for years before it was actually written. What I mean by this is that I was looking for a book that could comprehensively and objectively explain—from the viewpoint of traditional *usul*-based Sunni Islam (that is, representing the four *madhhabs* of Sunni Islam)—the proper relationship between Islam and politics, taking into consideration the art of the reasonably possible in the (admittedly uniquely challenging) present times (*al-waqi'*).

The book you have between your hands right now—*Islam and Politics: Islamic Political Principles and their Practical Implementation* by 'Allama Mufti Taqi Uthmani—represents the end of my—and perhaps your—intellectual quest for the proper nexus between Islam and politics.

Let me explain further: there are a lot of books about *Sunni* Islam and politics in Arabic and even in English. These usually fall into the following categories (or combinations and permutations thereof):

1. Academic books looking at a historical sweep of the different political views expressed by Muslims or claimed by Muslims as being 'Islam's view'.
2. Muslim Brotherhood books, theorising on Islam and politics or calling or arguing for one or other political view, with a whole gamut of opinions from Syed Qutb and Syed Sabiq to Rachid Ghannouchi.

3. Wahhabi and Salafi *jihadi* books, treatises and calls to action from Ibn Taymiyyah and Muhammad ibn 'Abd Al-Wahhab themselves to modern writers like Abu Mus'ab Al-Suri's *Call for Global Jihad*; Abu Muhammad Al-Maqdisi's *Millat Ibrahim*; the tracts of Osama Bin Laden and those of ISIS and Al-Nusra. There also softer, 'Saudi Salafi' texts which are less overtly pro '*jihad* of aggression'.
4. Modernist, pro-liberal, pro-Western, pro-democracy tracts and books gymnastically trying to make Islam fit in with modern Western political thought, in various forms.
5. Nationalistic tracts conflating contemporary Muslim causes with Islam itself, and using Islamic sacred texts as a platform for their views.
6. Apologists pro-government texts trying to use Islam to justify or prop up *x* or *y* modern Muslim nation state with justifications from the Qur'an and *hadith*.
7. Classical *usuli* Islamic texts about politics (e.g. Mawardi's *Ahkam al-Sultaniyyah*). Most of these of course are perfectly correct and legitimate, but naturally none of them take into consideration the vast discrepancies in not only the political and historical circumstances between now and then, but more importantly, the technological changes which have all but affected the human condition itself. Indeed, these changes in particular make it necessary to constantly reassess the political and sociological context within which we must apply our immutable Islamic beliefs.

None of these categories of books are sufficient in themselves for those who want to know how to apply *usuli* Sunni Islamic political principle to the situation as it is today. This may seem like a strange thing to say about the last category, because after all the principles of Islam are immutable and applicable to every circumstance, time, place and people, but in fact *these principles themselves* require a knowledge an understanding of circumstance, time, place and people in order to be applied justly. This is why Mufti Taqi's book is so important. It is characterized by the following qualities:

1. It brings together and summarises the vast majority—if not all—of the key texts that the Qur'an, the *hadith* and the *sunnah* mentions about politics. Indeed, Mufti Taqi's knowledge is vast—his mind, and discernment, is peerless in our day (if I may say so)—and this is clearly seen in the text.
2. It summarises the *usuli* tradition and experience of politics, particularly benefiting from the 700 years of Ottoman Hanafi experience with politics. The Ottoman Caliphate was the longest single Islamic experience with politics, and was one in which circumstances were constantly changing; in which there were constant *jihad*, and in which there were many different (well-respected and protected) non-Muslim minorities living within the Islamic polity. At the same time, this book does not neglect divergent opinions from the *Jumhur al-'ulama* (i.e the other three *madhahib*) especially when these provide better practices.
3. It is objective—without secret, personal or political agenda, or vested interest (*ma'rab*)—and without unguided passion (*hawa*).
4. It does not compromise Islam or the *shari'ah*, and indeed contains a lot of inconvenient truths for today's states and rulers. On the other hand, it is realistic and does not seek to impose unnecessary burdens on people out of misplaced religious zeal.
5. It clearly benefits from Mufti Taqi's having tried to immerse himself in history and political thought—and in particular, Western history and political thought. It is very rare to find an Islamic scholar of Mufti Taqi's calibre doing this, but without this kind of study it is impossible to fully understand the context of the present political reality.
6. It benefits from Mufti Taqi's own efforts and experiences with the Islamic courts in Pakistan, and with Pakistan's constitutional change (in which he was consulted but not fully listened to).
7. It is clearly and simply written, and the English translation is well edited by Muhammad Isa Waley.

For all these reasons and more, in my opinion, this book is the best book to appear in the modern world on Islam and Politics that I know of—certainly in English—and I humbly recommend it to all those interested. I do not say these things lightly.

But God knows best.

PROFESSOR HRH PRINCE
GHAZI BIN MUHAMMAD
1439 AH / 2017 CE.

INTRODUCTION

This book is based on the latter part of a series of lectures delivered in Pakistan in Urdu. Having examined the political theories and systems prevalent in various parts of the world, this writer proceeded to look into the guidance Islam has given with regard to politics. This forms the subject matter of the present book in English, incorporating footnotes and a glossary, which is divided into six chapters. Chapter One discusses the mutual relation between Islam and politics. We will inshallah examine in the light of the Holy Qur'an and the Sunnah the role of politics and political activities in Islam, and the nature of the Islamic injunctions bearing on the conduct of politics. Chapter Two examines the basic Islamic concept of government and its objectives. In Chapter Three we shall explain the guidelines as to how a government is to be formed. In Chapter Four we shall see what Islam has to say about running a government, and the rules and procedures to be followed. Chapter Five will elucidate the Islamic injunctions about defence and foreign policy. Finally, in Chapter Six we shall discuss questions relating to the removal of a government and the circumstances in which that may become permissible. The book is rounded off with two articles on political affairs with reference to Pakistan, previously published there in the monthly journal *Al-Balagh*.

CHAPTER ONE
THE RELATION BETWEEN
ISLAM AND POLITICS

1. THE PLACE OF POLITICS IN ISLAM

The first thing to be said is that nowadays, views about the relation between Islam and politics on the subject are polarised between two extreme positions. One is that of secularism according to which Islam is, like religion in general, a personal matter concerning only the individual and no one else, and that politics and the government have nothing to do with it. As we saw in the first part of this work, this kind of thinking was adopted as a reaction to the evils of the Christian form of theocracy. Once secular democracy became popular in many parts of the world, this kind of thinking also found acceptance. It was further strengthened by the activities of some religious circles, who instead of concentrating on the reform of their own character and deeds, and engaging in acts of worship and the like, became the focal point of criticism when they began to engage in political activities as well. It raised many an eyebrow that a religious person should participate in politics. This viewpoint stemmed from comparing Islam with other religions, although such an analogy is absolutely wrong. The teachings of Islam are not limited to beliefs, worship and moral concerns. It has in fact provided us with invaluable injunctions regarding financial questions as well as matters of politics and government. Without these guidelines and principles, the holistic concept of Islam would be incomplete. Some aspects of the injunctions in question will be discussed below, *in shā' Allāh*.

The second extreme view is that of those who made every effort to refute secularism and, as a result, declared politics to be the actual objective of Islam. According to them, the purpose of Islam is to establish a just

political system all over the world, and all the other injunctions of Islam are meant to serve this end. Hence, a person who engages in politics so that Islam may prevail is serving the true purpose of Islam, and those who engage in other things, like purification of the soul, preaching, reformation of society, etc., and are not involved in politics, are myopic and oblivious to the actual purpose of Islam.

Both of these views are extreme, and they stem from an incorrect perception of the role politics plays in Islam. In reality, the teachings and injunctions of Islam relate to every aspect of life, including politics. But it is wrong to say that politics is the actual purpose of Islam and that all injunctions and teachings are meant only to serve that purpose. This can be illustrated through an example. Islam has laid down very detailed guidelines and instructions about trade, but it would be absolutely wrong to say that trade is the actual purpose of Islam. Similarly, Islam has laid down many guidelines concerning marriage, but the mere fact that there are many detailed guidelines does not mean that marriage is the actual purpose of Islam. So the fact that Islam has laid down basic guidelines and injunctions about politics does not mean that politics is the actual purpose of Islam.

Allah ﷺ has clearly stated the purpose of His having created man in the following *Āyah*:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونَ

And I have not created the Jinn and man except that they may worship (or serve) Me. (51:56)

'Worship', or in Arabic '*Ibādah*', means being completely at the service of Allah Most High. This in turn includes all forms of worship sanctioned by the *Shari'ah*, as well as obeying Allah ﷺ in every aspect of life. The word '*ibādah*' is related to the word '*abd*', meaning 'slave'. A slave obeys his master in every matter; but he does not worship him, so a slave's servitude to his master cannot be called '*ibādah*'. The relationship between Allah ﷺ and His servants, however, calls for obedience as well as worship, and hence it can be called '*ibādah*'.

Ibādah itself is of two kinds. One type is done for no other purpose but worshipping Allah ﷺ, such as prayer, fasting, Zakat, Hajj, sacrifice, and so on. All these are direct forms of worship. The second kind of '*ibādah*,

comprises actions that include an aspect of worldly benefit, but which, if done in accordance with the Divine injunctions, and in order to please Allah Most High, can become an indirect form of worship. Take trade, for example. If it is done in accordance with the Divine commandments and with the intention of pleasing Allah ﷺ, it becomes worship in a certain sense and one is entitled to a reward for it. But this is an indirect form of worship, because trade is not in itself an act of worship; only through obedience and good intention can it become one. The same applies to politics and government. If carried out in obedience to Allah ﷺ and in order to please Him, they become a form of worship, an indirect form of worship, because in themselves they are not an act of worship. However, just as in the case of trade, obedience to Allah ﷺ and good intention convert them into worship. Hence when Allah Most High has stated that He has created mankind to worship Him, this covers both forms of worship. These two forms of worship together form the objective, the purpose of man's creation.

Now, obviously the direct forms of worship are of higher standing than the indirect ones. There are many forms of indirect worship, and one cannot say that man has been created for only one of them. Rather, all direct and indirect forms of worship put together are the purpose for which man has been created. However, it should be kept in mind that the indirect forms of worship also vary in significance. The more far-reaching the effects that any of them has, the more important it is. As far as politics is concerned, once a proper Islamic government is established according to the principles of the Holy *Shari'ah*, not only does it become easier to perform indirect forms of worship, but also their circle of practical application expands. In that sense, it is not wrong to point out the importance of political activity; but it would be wrong to declare it the sole purpose of religion, for that would upset the whole list of priorities. To accept that the purpose of Islam is to govern would lead to a whole series of ills.

The first of these ills is that if one declared politics to be the actual purpose, everything else would assume a secondary role. Actions which are direct forms of worship would no longer remain the actual purpose: they would be reduced to being a means to achieve the actual purpose, and so their importance would be diminished. In fact, however, the Holy Qur'an tells us that political powers are a means, while direct forms of worship are the actual purpose:

الَّذِينَ إِنْ مَكَّنَاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ وَأَمْرُوا بِالْمَعْرُوفِ وَنَهَا
عَنِ الْمُنْكَرِ

Those who, if We give them power in the land, establish the prayer, pay Zakat, enjoin goodness, and forbid evil. (22:41)

This verse informs us that the purpose of authority and power is to establish the prayer, to pay zakat, and so forth. This makes it clear that worship is the actual purpose, which authority is to be used to attain. Some have argued that power is the actual purpose, citing this *Āyah*:

وَعَدَ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَعَمِلُوا الصَّالِحَاتِ لِيَسْتَخْلِفَنَّهُمْ فِي الْأَرْضِ كَمَا
اسْتَخْلَفَ الَّذِينَ مِنْ قَبْلِهِمْ وَلَمْ يَكُنْ لَهُمْ دِيْنٌ إِذَا ارْتَضَنِي لَهُمْ وَلَيَبْدِلَنَّهُمْ مِنْ
بَعْدِ حَوْفِهِمْ أَمْنًا يَعْبُدُونَنِي لَا يُشْرِكُونَ بِي شَيْئًا

Allah has promised those who believe and do good that He will surely make them succeed (the present rulers) in the earth, as He has caused those who were before them to succeed (others); and that He will surely establish for them their religion which He has approved for them, and will exchange their fear for peace. They worship Me and do not associate anything with Me. (24:55)

Hakīm al-Ummah Mawlānā Ashraf ‘Alī Thānawī ﷺ provided an unanswerable rejoinder to this argument, which we will quote here. He says:

‘Allah Most High says:

الَّذِينَ إِنْ مَكَّنَاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ وَأَمْرُوا بِالْمَعْرُوفِ وَنَهَا
عَنِ الْمُنْكَرِ

Those who, if We give them power in the land, establish the prayer, pay zakat, enjoin goodness, and forbid evil; and with Allah rests the outcome of [all] affairs. (22:41)

This shows us that acts of worship are an end in themselves. Politics and Jihad are not ends in themselves, but are a means to achieve the end of establishing religiosity. That is why all the Prophets ﷺ were given all sorts of injunctions about worship, but not all received injunctions about politics and Jihad. If there was need for the latter such injunctions were given, but

not otherwise. That is a hallmark of a means: it is provided as and when it is required.

Some readers may wonder about an apparent contradiction between the above *Āyah* and another which seems to state that acts of worship are a means and politics and government an end. Allah ﷺ says:

الَّذِينَ إِنْ مَكَّنَاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ وَأَمْرُوا بِالْمَعْرُوفِ وَنَهَا
عَنِ الْمُنْكَرِ

Those who, if We give them power in the land, establish the prayer, pay zakat, enjoin goodness and forbid evil; and with Allah ﷺ rests the outcome of all affairs. (22:41)

In this *Āyah*, faith and good deeds are stated to be prerequisites for power in the land, which implies that power and esteem are mentioned as rewards for faith and good deeds, and this power and esteem stem from religiosity, as a special feature. Power and might are promised to the pious, but that does not mean that the thing promised is the end in itself. Otherwise there would be no meaning in this *Āyah*:

وَلَوْ أَنَّهُمْ أَقَامُوا التَّوْرَاةَ وَالْإِنْجِيلَ وَمَا أُنْزِلَ إِلَيْهِمْ مِنْ رَبِّهِمْ لَأَكَلُوا مِنْ فَوْقِهِمْ وَمِنْ
نَحْنُ أَرْجُلِهِمْ

And had they upheld the Torah and the Gospels and that which has been sent down to them from their Lord (i.e. the Qur’ān), they would have been fed from above and from below. (5:66)

Now, this *Āyah* promises ample provisions as reward for upholding the Torah and the Gospels: that is, for acting according to the Holy Qur’ān. In return for piety, it has been promised that a religious person shall not starve or remain unclothed; but that which has been promised is not necessarily an end in itself. Here, power and authority are promised in turn for faith and good deeds, the former stemming from the latter, but not as an end in themselves.

In conclusion, it should be kept in mind that politics is a means, and piety is an end. This does not mean that politics is not desirable to a certain

degree; the point was to clarify that it is not an end in itself, whereas piety is an end in itself.¹

To sum up, the consequence of declaring politics to be the actual end of religion, some acts of worship to be means to achieve this end, is that people come to think that all acts of worship are means of achieving that end. The purpose of prayer in congregation would then be to foster a communal spirit in order to realise political goals, to inculcate discipline and order, to improve mutual relations among the Muslims, that they may begin to find ways to help one another and work together for that higher purpose. The actual purpose of Zakat would be to foster a spirit of sacrifice to achieve a higher end; the purpose of fasting would mean to enable one to endure hardship to achieve the higher purpose; and Hajj would be a kind of conference for Muslims from all over the world, creating unity and harmony among them. In short, all acts of worship would be meant only to gain some worldly benefit. There is no doubt that these acts of worship do also have the above-mentioned benefits, but those are not their spirit, their essence. Their spirit and essence are to strengthen one's ties with Allah Most High, to turn to Him, and to prefer obeying Him over everything else in this world. To declare politics to be the main purpose of Islam would weaken that spirit.

The third evil is that if all acts of worship are viewed as a means to attain the higher purpose, the natural consequence is that one does not consider it to be much of a problem if one has to sacrifice some of them for that higher purpose. If political activities and gatherings keep one from attending the prayer in congregation, or from coming to the mosque, it would seem there is nothing wrong with that. Even missing a prayer would not seem evil. Even to lapse into one or more of the *makrūhāt*—things strongly disapproved of in Islam—would not seem to matter much, if one did so in order to achieve the supposed higher purpose.

The fourth evil is that people who engage in direct forms of worship and who exhort people to do likewise by reminding them of their merits and blessings, are accused of being oblivious of the actual purpose of religion. Sometimes they are even belittled and made fun of. Books about ethics and the virtues are considered of secondary importance, and are even treated by some as though they were unnecessary, or a distraction from

¹ Ashraf 'Ali Thānawī, *Ashraf al-sawāniḥ* (Multan, n.d.), vol. 4, *Khātimat al-Sawāniḥ*, pp. 28–29.

the real purposes of religion. Even *Taṣawwuf* (Sufism) and self-reform, as practised in conformity with the Holy *Shari'ah* and the Sunnah, are called 'opium'. Those engaged in acquiring and propagating the Islamic branches of knowledge are considered to lack a proper outlook on religion.

The fifth evil which results from the above thinking is that people are likely to develop unbecoming notions about many of the Prophets, because the majority of the Messengers whom Allah ﷺ sent failed to achieve what the people we are discussing regard as the real purpose of religion. Of the one hundred twenty-four thousand Prophets, only a mere handful are known to have established or run a government. Apart from the Noble Prophet Muhammad ﷺ, our Masters Yūsuf, Mūsā, Yūshā', Samū'īl, Dāwūd, and Sulaymān ﷺ did so; but it is not proven that any other Prophet did. Does this mean that apart from these august souls, no other Prophet attained the 'real' purpose of religion? Those who consider political success the true purpose of religion would presumably not hesitate to say that the other Prophets failed.

To sum up, politics has an important place in religion, but to declare it to be its principal purpose would upset the whole system of priorities and preferences. On the other hand, to suppose that religion is limited to prayer and fasting while completely neglecting the other branches of religion as irrelevant would also be a great mistake. The reality is that religion has many branches, and politics is one of them. In order to live according to Islam, it is necessary to act upon all its injunctions, whichever branch they belong. In practice, however, it is not possible for a person to dedicate himself or herself to all its branches. Tasks and responsibilities need to be distributed, with some people choosing to work for one and applying their efforts to it, while others do the same for another. There is nothing wrong with that. But it would be wrong to think that the branch one has chosen is the sole purpose of religion, when it is just one of many. The work one does is just one of many things that need to be done. For example, a person may choose to engage in politics, because he thinks that is where they can accomplish the most. Such a person do so—provided their motives are sincere (a consideration that we Muslims, like others, are liable to overlook). To say that politics alone is the real purpose of religion is wrong. But if a person chooses for himself politics, for the sake of serving Islam and the Muslims, that is indeed religion.

2. THE KIND OF INJUNCTIONS ISLAM HAS LAID DOWN REGARDING POLITICS

The second point is that Islam has beyond doubt laid down many injunctions about politics, but has not drawn up a detailed plan of what an Islamic government should look like. It has provided rules and guiding principles, but how are these principles to be implemented and acted upon? Islam has left the answer to these questions to the scholars and people of insight of each age and era. The principles that Allah ﷺ has given us in the form of the Holy *Shari'ah* are unalterable, everlasting guidelines. At the same time, they are flexible enough to allow people of knowledge to work out a detailed plan for their implementation—on condition, of course that their plan is within the limits of the *Shari'ah*.

For example, the Holy Qur'ān tells us:

وَأَعِدُّوا لَهُم مَا أَسْتَطَعْتُمْ

And prepare whatever you can against [your enemy]. (8:60)

This is an Islamic principle, and Allah has given some examples to illustrate it. But there is no statement as to what kind of armaments should be prepared. That is left to the people of knowledge in each time to decide in the light of their knowledge and experience what is needed for defence purposes.

Similarly, Islam provides basic guidelines in the field of politics, but has not laid down all the details. It is for Muslims to decide how many government departments there are to be, how administrative powers are to be divided, whether there should be ministers or not, and if so, how many; the same applies to whether there should be a unitary form of government or a federal one, whether the legislature should be unicameral or bicameral, how advisory sessions should take place, and so on. All these things fall in the circle of permissible matters, within which the people of knowledge must take decisions appropriate to the needs of their times. Hence when we talk about Islamic principles of politics, we should not expect the statements made by the jurists of this *Ummah*¹ to stipulate whether there should be a unicameral a bicameral system, or how many members there are to be

¹ The collectivity of Muslims.

in the cabinet. Such particulars cannot be found in the Holy *Shari'ah*, but the lack of them is in no way a defect.

The *Shari'ah* provides guidance where it is clear that if a matter were left to people's own understanding, they might well go astray. As far as permissible matters are concerned, the majority of them have been left to mankind to resolve. The Islamic principles of politics are unalterable on one side, but they are also quite flexible on the other, in that the way of putting them into practice can be adjusted to the needs and demands of the changing times. As long as one abides by the basic principles, one may introduce changes in secondary matters. Hence, when we talk about Islamic politics we do not mean a rigid mode of government in which all details are laid down for all time to come. We mean the basic concepts and fundamental principles that the Holy Qur'ān and the Sunnah have laid down. In the coming chapters, we shall *in shā' Allāh* try to elucidate the principles contained in the *Shari'ah*.

CHAPTER TWO
THE ISLAMIC CONCEPT
OF GOVERNMENT

One cannot understand fully the injunctions and guidelines Islam has given about politics and government until one has a correct understanding of the concept of government. In the first part of our talks, we analysed various philosophers' theories about the beginning and the purpose of government. The concept of government in Islam is not like any of those theories; and without understanding it properly, one cannot properly understand the basis of the Islamic principles and injunctions regarding politics.

THE FOUNDATION OF THE ISLAMIC CONCEPT:
SOVEREIGNTY BELONGS TO ALLAH ﷺ

The most important basic principle is that Allah ﷺ is the true Sovereign of this universe, and of all that is in it. Worldly rulers rule only as a consequence of this sovereignty, and in subservience.

This is the basic principle which allows neither any difference of opinion nor *Ijtihād* of any kind, nor can it be ignored in any instance, nor can there be any negotiations on this point. This is the first and most fundamental article of an Islamic constitution, which has been stated more than once by the Holy Qur'ān in clear and unambiguous terms:

إِنَّ الْحُكْمَ إِلَّا لِلَّهِ

Truly [all] Sovereignty belongs to Allah. (6:57)

In another place we read:

اللَّهُ أَكْلَمُ

So remember: To Him belongs [all] Sovereignty. (6:62)

And:

اللَّهُ أَخْلَقَ وَالْأَمْرُ

Truly His is the Creation and the Ultimate Command. (7:54)

And:

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ

And to Allah belongs the Dominion of the heavens and the earth. . . (3:189)

And:

فِي اللَّهِمَّ مَالِكَ الْمُلْكِ تُؤْتِي الْمُلْكَ مَنْ شَاءَ

Say: O Allah, Owner of [all] Dominion, You give dominion to whomever You will. . . (3:26)

All these *Āyāt* show that sovereignty over the whole universe belongs to Allah ﷺ alone. Secular democracy, however, presumes that the right to rule belongs to the people. Rulership or government means having the right to make decisions and issue edicts without being dependent on anyone else. That right belongs to no one but Allah ﷺ. If one considers anyone else as a ruler in this sense, one will be guilty of having ascribed partners to Allah.

The actual meaning of theocracy is that rule belongs to God; but as has been already mentioned, in Judaism, Christianity and Hinduism there was no proper way of implementing this concept, so it often degenerated into unbridled rule by religious leaders. The consequence is that no one thinks of 'the rule of God' when he hears the word 'theocracy'. What comes to mind instead is rule by religious leaders. Theocracy has been translated as 'rule by religious leaders' in Urdu books on politics; but to give religious leaders the status of real rulers instead of Allah ﷺ is the worst form of associating partners with Him. The Holy Qur'an severely rejects it:

أَتَخْذِلُو أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ

They have taken their rabbis and priests as lords besides Allah. (9:31)

Hence the most fundamental principle underlying Islamic politics is to acknowledge that the ultimate ruler is Allah ﷺ. This has nothing to do with rule by religious leaders, which Christianity adopted in the name of theocracy, and which became so notorious that people now do not even want to hear its name. In Islam, on the other hand, 'the rule of God' has kept its proper meaning. Its obvious implication is that whatever commands and guidelines Allah Most High has sent to man, whether in the form of the Holy Qur'an or Noble Hadiths, are the first and foremost sources on which an Islamic government is to rely. The government is not permitted to make a law that contravenes them, or to take any steps that do not conform to these guidelines.

In short, the acknowledgement that ultimate sovereignty belongs to Allah ﷺ is what distinguishes Islamic politics from secular democracy. In the latter, the parliament or other national assembly, in its capacity as public representative body, has the power to enact any law it likes. If the constitution of a country restricts the legislative powers of its parliament, the parliament can remove those restrictions by amending the constitution. The constitutional bases of an Islamic government, however, are the Holy Qur'an and the Sunnah; and they are unalterable. There can be no law, or article in the constitution, that does not conform to them.

When recounting the history of different fields of human intellectual activity, Western writers often fail to mention the contributions made by Muslims. In the case of political science, they begin with Plato and Aristotle, then come to the Christian era, then skip a few centuries and come to Voltaire, Montesquieu and Rousseau. There is no mention of the long era of Islamic governments, in which a different concept of politics was presented. As for political systems of religious origin, they mention only the theocracy of Jews, Christianity and Hinduism. There is no mention of how Islam has made the concept of Allah ﷺ being the Ultimate Ruler the basis of its politics, or of what was the foundation of the Righteous Caliphate or subsequent Islamic governments. This is the outcome of the prejudice the West has towards Islam and Muslims. Intellectual integrity and honesty, however, require that at the very least one would mention the Islamic concept of politics, even if only as a theory, and the governments that were established according to that concept.

Faith in Allah's ﷺ Ultimate Sovereignty is an extremely important

principle that causes a number of facts to become clear almost on its own. Take the theory of Social Contract, which relates to the beginnings of government and is the most popular theory in this regard. The principle that ultimately sovereignty belongs to Allah ﷺ is entirely contradictory to this theory and shows it to be without foundation. In fact, it is nothing but an invention of creative minds, and is not in the least proved by circumstantial evidence. The questions are: Who was there when the Social Contract came into being? When did this contract come into being? Between which nations was it made? Who were the parties to this contract? There is no one who could answer these questions with confidence. There has only been made up a theory that perhaps this was how things happened. It is this kind of approach regarding which the Holy Qur'an says:

مَا لَهُمْ بِذَلِكَ مِنْ عِلْمٍ إِنْ هُمْ إِلَّا يَخْرُصُونَ

They have no knowledge of that; they are merely guessing. (43:20)

On the other hand, the principle according to which Allah ﷺ is the Ultimate ruler tells us that when Allah created man, He announced:

إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً

Indeed I shall make a representative on earth. (2:30)

This clearly shows that the first human being, Sayyidunā Ādām ﷺ came as representative of Allah ﷺ. Ultimate Rulership belonged and belongs to Allah, but He sent the first human being as His representative, to rule according to Divine guidelines: Sayyidunā Ādām ﷺ. Other human beings who appeared in due course were his subjects. This is how government came into being, with the appearance of the first man. But the underlying principle of this government was that ultimate Sovereignty belongs to Allah ﷺ. No one has the right to govern in a way that does not accord with the Divine Commands. Anyone in a ruling position is in fact subject to Allah's Ultimate Rulership. He represents Divine rule on earth, and so such a person is called *Khalifah* (caliph). That is why government by an *Amīr al-Mu'minīn* (Commander of the Believers) is called *Khilāfah* (caliphate), and the *Amīr al-Mu'minīn* himself is called *Khalifah* (caliph).

THE MEANING OF *KHILĀFAH*

The Holy Qur'an frequently mentions the words *Khalifah* and *Khalifah*. The *Mufassirūn* (commentators on the Qur'an) say that Divine *Khilāfah* has two meanings. One is that everyone who believes in Allah ﷺ is a *Khalifah* of Allah. Man is required to abide by the Divine Commandments, and to adopt morals and ethical standards resembling those of the Divine. This has been referred to as تَخْلُقُ بِاخْلَاقِ اللَّهِ ('acquiring the character traits of Allah'). In this sense, every believer is Allah's *Khalifah*, and it is required of mankind to carry out *Khilāfah* of Allah ﷺ in this sense. The majority of commentators hold that the Āyah اَنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً refers to this individual kind of *Khilāfah*, according to which every human being is Allah's *Khalifah* insofar as they are bound to abide by the Divine Commandments, and commanded to live up to the maxim تَخْلُقُ بِاخْلَاقِ اللَّهِ ('Acquire the characteristics of Allah').

The second meaning of *Khilāfah* is that in order to implement Allah's ﷺ attribute of Rulership, there needs to be His representative on earth, who is to rule over the people, keeping in mind that he is to do so in the capacity of Allah's Caliph. The Holy Qur'an says about Sayyidunā Dāwūd ﷺ:

إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ

We have made you a *Khalifah* on Earth. (38:26)

This refers to the second meaning of *Khilāfah*. When we mention *Khilāfah* as a political principle, we mean this meaning of the word. In line with this second meaning, an Islamic ruler is not a ruler in his own right, but a *Khalifah* of Allah Most High. And being a *Khalifah*, he is necessarily bound to abide by Allah's ﷺ commandments in his government. This is a major distinction between the Islamic concept of politics and other theories: in secular systems, the ruler is not bound to follow the Divine Commandments, whereas a *Khalifah* must follow the Divine Edicts before issuing any edicts himself.

Here it should also be kept in mind that the actual *Khalifah* of Allah Most High was the Noble Prophet Muhammad ﷺ. The caliphs who followed him, the Rightly-Guided Caliphs ﷺ, became Caliph because of him; and that is why they used to call themselves *Khalifat Rasūl Allāh* ﷺ, rather than *Khalifat Allāh*. Once a person addressed Abū Bakr al-Ṣiddiq

as 'Khalīfat Allāh'. In reply, Abū Bakr said: لست خليفة الله ولكتني خليفة رسول الله 'I am not the *Khalīfah* of Allah but the *Khalīfah* of the Messenger of Allah'.¹

Allah Most High granted Ibn Khaldūn an amazing type and degree of intelligence. Ibn Khaldūn, in his *Muqaddimah*, discussed every kind of topic to perfection, and although the *Muqaddimah* is just a single volume, there seem to be few aspects of life that he did not discuss or touch on. Ibn Khaldūn wrote, with reference to our topic, that government is of three types: governing according to one's nature; governing for the sake of political ends; and *Khilāfah*.²

الحمل الكافى على مقتضى الغرض والشهوة, to govern being guided by one's own benefit as well as by one's whims and passions. This was very much the case with absolute monarchies.

الحمل الكافى على مقتضى النظر العقلى فى, جلب المصالح الدنيوية ودفع المضار, to rule the people according to the dictates of gaining worldly benefit and warding off detriment, in the light of reason. This description fits secular democracy which, having no enduring values, must rely on what reason tells it to be the best course of action.

الحمل الكافى على مقتضى النظر الشرعى فى مصالحهم الأخروية والدنية الراجعة إليها, ruling the people according to the spirit of the *Shari'ah*, which will benefit them in the Hereafter as well as in this world, and the outcome of which will improve their prospects in the Hereafter.³

Think it over and you will find that all forms of government are covered by these three definitions. One tradition relates that Sayyidunā 'Umar al-Fārūq once said to the people: 'I do not know whether I am a king or a Caliph.' One person who was sitting with him, said: 'Commander of the Faithful, there is a difference between them.' 'Umar said: 'What difference?' The man said: 'A Caliph is one who is justified in taking what he takes, and who makes use of it in the proper manner, while a king is one who oppresses the people, taking from one and giving it to another.' Hearing this, Sayyidunā 'Umar kept silent.⁴ By giving and taking in a proper,

1 Badr al-Dīn Ibn Jamā'ah, *Tahrīr al-ahkām fī tadbīr ahl al-Islām* (Qatar ed.), p. 57.

2 Ibn Khaldūn, *Muqaddimah*, p. 179; Chapter 3, section 25.

3 Ibid.

4 Ibn Sa'd, *Tabaqāt*, vol. 3, p. 285, on Sayyidunā 'Umar's *Khilāfah*.

justified manner, one discharges the rights of Allah as well as those of His bondsmen. Only he who obeys the Divine Commandments is able to discharge his duty towards Allah and the people; and that is *Khilāfah*.

THE OBJECTIVES OF GOVERNMENT

What are the objectives of government? To promote the well-being of the people, and to protect their rights. But you must have noticed that not one of the popular political theories has made it an objective to educate people, to foster goodness and to curb evil. No political theory talks about that. This is because there is no constant concept of good and evil according to them. In today's fashionable philosophies, good and evil are relative terms. In other words, society itself decides through its norms of behaviour what is good and what is bad. It is not necessary that a thing that was considered bad yesterday to be considered bad today. Rather, if a certain kind of behaviour becomes common in a society, and people begin to regard it as good, then this evil behaviour will become 'good'. Similarly, if people consider one thing good, it is not necessary that people living in another country also consider it good. In other words, there is no concept of absolute good or absolute evil. This is why the promotion of virtue and the curbing of vice have not been mentioned among the purposes of government.

In Islam, on the other hand, there is a reliable and constant standard of good and evil. Anything that the Creator of the Universe has termed good is good, and anything He has termed evil is evil. Accordingly, the promotion of goodness and the prevention of evil are among the foremost government objectives of the *Khilāfah* system. The objectives of government are clearly stated in the Holy Qur'ān:

الذين إن مكثاهم في الأرض أقاموا الصلاة وآتوا الزكوة وأمرُوا بالمعروف ونَهَوا عن المُنكر وَلَلله عَلِيهِ الْأُمُور

Those who, if We give them power in the land, establish the prayer, pay Zakat, enjoin goodness, and forbid evil; and with Allah rests the end of all matters. (22:41)

In this Āyah, Allah Most High clearly states that the purpose of a govern-

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The third type, *Khilāfah*, Ibn Khaldūn defined as follows: حمل الكافة, علا مقتضى النظر الشرعى فى مصالحهم الاخروية والدنية الراجعة إليها, ruling the people according to the spirit of the *Shari'ah*, which will benefit them in the Hereafter as well as in this world, and the outcome of which will improve their prospects in the Hereafter.³

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الَّذِينَ إِنْ مَكَّنَاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَةَ وَأَمْرُوا بِالْمَعْرُوفِ وَنَهَوْا
عَنِ الْمُنْكَرِ وَلِلَّهِ عَاقِبَةُ الْأُمُورِ

Those who, if We give them power in the land, establish the prayer, pay Zakat, enjoin goodness, and forbid evil; and with Allah ﷻ rests the end of all matters. (22:41)

In this Āyah, Allah Most High clearly states that the purpose of a govern-

ment is not simply to make people happy, as some governmental theories claim. Happiness is in any case a rather vague term. Different tempers require different things to be happy. People with criminal minds must commit crimes to be happy. Happiness is an expression which can be used to cover up all kinds of evil. If one considers the governmental objectives stated in the Holy Qur'ān, one will come to realise that they suffice to fulfil the true purpose of government.

Establishing the prayer

The first objective mentioned is to establish the prayer. A secular mind might declare that this has nothing to do with politics, but the reality is according to what has been stated in the Holy Qur'ān. Everybody needs some kind of governing authority, because if people were left to pursue their happiness without restraint, that would soon lead to all sorts of excesses. The government must make the people abide by some sort of system, but obviously, one cannot make people follow a system through the force of law alone. One needs to train their minds, and the most effective way to do that is to instil in them the awareness that they will have to present themselves before Allah ﷺ, to whom they will be answerable for all they have done. It is that knowledge that causes a person to keep vigil in the darkness of night and in the solitude of the wilderness. Offering the prayer regularly plays an important role in maintaining it.

This is why a good ruler makes it a point to include establishing the prayer as a priority among his objectives. This is why the Messenger of Allah ﷺ called the prayer the pillar of religion, why he attached special importance to the prayer when training his Companions, why he always led the prayer himself. And this is why he was glad, when, on the last day of his blessed life, when he was too weak to lead the prayer, he lifted the curtain from his window and saw that the people were offering the prayer under the Imamate of Sayyidunā Abū Bakr al-Šiddīq ﷺ. Then the Rightly-Guided Caliphs, whose government was in every sense an excellent example of the Islamic political system, also put the greatest emphasis on the ritual prayer. They led the prayer themselves, so that the offices of political ruler and Imam became one. Islamic literature refers to the Imamate of prayer as the minor and the political Imamate as the major Imamate. The Rightly-Guided Caliphs ﷺ not only urged their subordinates to be particular about

the prayer: they also made it the most important of the duties attached to their position. Imam Mālik ﷺ included this Tradition in his *Muwatta'*:

عَنْ نَافِعٍ مَوْلَىٰ أَبْدَ اللَّهِ بْنِ عَمْرَانَ عَنْ عُمَرَ بْنِ الْخَطَّابِ رَضِيَ اللَّهُ تَعَالَى عَنْهُ كَتَبَ
إِلَيْهِ عَمَالَهُ أَنَّ أَهْمَّ أَمْرِكُمْ عِنْدِي الصَّلَاةُ فَمَنْ حَفَظَهَا وَحَفَظَ عَلَيْهَا حَفْظَ دِينِهِ وَمَنْ
ضَيَّعَهَا فَهُوَ لَمَّا سَوَّاهَا اضْبَعَ

On the authority of Nāfi', freedman of 'Abd Allāh ibn 'Umar ﷺ: 'Umar ibn al-Khaṭṭāb ﷺ wrote to his governors: 'The most important of your actions in my sight is the prayer. He who guards it and offers it regularly guards his religion, and he who squanders it shall squander his other actions yet more.'¹

After that, 'Umar ﷺ wrote in a letter the details of the timings of the prayer, that the prayer is to be offered at such and such times. This was not a private letter but an official document which the Commander of the Faithful sent to all governors.

Similarly, it is mentioned in the books of Hadith that during his caliphate, Sayyidunā 'Uthmān ibn 'Affān ﷺ taught the people practically how to perform the ritual ablution (*wudū'*). Something similar has been reported from Sayyidunā 'Alī ﷺ.

Modern theories fail to understand what prayer and *wudū'* have to do with politics and government. But in Islam politics, economics or any other aspect of worldly life, have a very deep connection with Allah ﷺ. They cannot be separated from a person's spiritual training. Prayer fosters a permanent sense of duty in the heart. It reminds one that every word and deed is recorded by the One to Whom we are all bound to return one day. This is the spirit that makes a human being a human being, and that keeps him disciplined. Allah Most High has said:

إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ ۖ وَلَذِكْرُ اللَّهِ أَكْبَرُ ۖ وَاللَّهُ يَعْلَمُ مَا
تَصْنَعُونَ

The prayer deters from indecency and vice, but truly the remembrance of Allah is yet greater; and Allah knows all that you do. (29:45)

¹ Mālik ibn Anas, *al-Muwatta'*, A'zamī, vol. 2, p. 9.

This *ayah* explains clearly that since the prayer reminds one of Allah ﷺ, and since a person who offers the prayer regularly is always aware that Allah sees him in all he is doing, the prayer keeps him away from evil acts and vulgarity. Now, people who are as a matter of principle not inclined to accept this give examples of 'So and So, who performs the prayers, but still did such and such a wrong deed.' First of all, when giving such examples, people tend to exaggerate, and second, exceptional cases cannot prove a rule for all people who offer the prayer. One should always look at the majority cases when making comparisons. It is a fact that if one compares the people who do not offer the prayer with those who do, the latter generally score higher in matters like honesty, justice, and truthfulness—and that in an age when there is no communal, comprehensive system of providing religious training for worshippers. Once the Shari'ah is implemented at governmental level, one of the demands of 'establishing the prayer' would be to make arrangements for the religious and moral training of the people. To sum up: for the above reasons, the Holy Qur'an states that 'establishing the prayer' should be the foremost objective of the government.

The payment of Zakat

The second important objective of an Islamic government is to ensure the payment of Zakat. This makes it clear that the satisfaction of the ruling class or the rich is not meant to be among the aims of government. Rather, its purpose is to put Allah's ﷺ commandments into practice and try to improve the lot of the poor masses. Furthermore, love for wealth tends to corrupt people and lead them to commit evil acts. Zakat is an excellent means of keeping this love under control and to foster the spirit of selflessness instead of selfishness. Just as the prayer brings about sincerity and spirituality in a person's individual life, so the payment of Zakat engenders spirituality and God-consciousness in his financial life.

Enjoining good and forbidding evil

The third major objective of an Islamic government is *al-Amr bi-al-ma'ruf*, to enjoin what is good, and *al-Nahy 'an al-munkar*, to forbid evil. In a sense, this is the duty of every Muslim. The Holy Qur'an says:

كُنْتُمْ خَيْرُ أُمَّةٍ أُخْرِجْتُ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ
بِاللَّهِ

You are the best *Ummah* that has been brought forth for mankind. You enjoin good and forbid evil, and you believe in Allah. (3:10)

Prophetic Traditions (*Aḥādīth*) define various levels of *al-Amr bi-al-ma'ruf wa al-Nahy 'an al-munkar*. One Tradition gives the following instructions:

من رأى منكراً فليغيره بيده فان لم يستطع فبلسانه، فان لم يستطع فقلبه
وذلك اضعف الايمان

'Whoever of you sees something evil should change it with his hand; or, if he cannot, with his tongue; or, if he cannot, with his heart [meaning that he should inwardly condemn it]; and that is weakest [degree] of faith.'¹

The jurists have inferred from this Hadith that the injunction to trying to change some evils with one's tongue applies to every Muslim, provided they do not fear any unbearable consequences. This is stated in another Tradition. 'Abd Allāh ibn 'Umar ﷺ said: I heard something from [the notorious governor] Hajjāj ibn Yūsuf that I considered evil, and it occurred to me to refute what he had said. But then I remembered something the Noble Prophet ﷺ said: 'لَا يَنْبَغِي لِلْمُؤْمِنِ أَنْ يَذَلَّ نَفْسَهُ' [It is not becoming for a believer to humiliate himself]. I asked: How would he humiliate himself? He replied: 'بِتَعْرُضِ الْبَلَاءِ مَا لَا يَطِيقُ' [By subjecting himself to trials such as he cannot endure].²

Condemning something as evil, however, is the duty of every believer. Some scholars have stated that the fact that 'condemning it as evil' is mentioned in association with 'changing it', means that he should change it within his heart. That is, he should consider it as so evil that his heart becomes restless and finally leaves him with no choice but to talk against it or act against it until the evil in question ceases to exist. But as far as changing an evil with one's hands is concerned, this order is addressed to those in power. The *Fatāwā-yi 'Ālamgīrī* (the compilation of fatwas made by order of the Mughal emperor Awrangzīb) states³:

1 Muslim, *Šaḥīḥ*; *Kitāb al-Imān*; *bāb bayān kawn al-nahi 'an al-munkar*; on the authority of Abū Sa'īd al-Khudrī ﷺ.

2 al-Bazzār; *al-Awsat*; and *al-Kabīr* of al-Tabarānī; *Majma' al-zawā''id*.

3 *al-Fatāwā al-'Ālamgīriyyah*, dār al-kifr, vol. 5, p. 353; *Kitāb al-Karāhiyyah*.

ويقال: الامر بالمعروف باليد علي الامراء وباللسان علي العلماء وبالقلب لعوام الناس وهو اختيار الزندوستي - كذا في الظهيرية

'It is said that the obligation to enjoin good and forbid evil with the hand falls upon rulers; with the tongue, upon [religious] scholars; and with the heart, upon ordinary people.'

This means that whenever people acquire some sort of authority, it is a religious obligation (*fard*) upon them to prevent evil within the sphere of their authority. For example, it is the duty of the head of a family to prevent evil within his family. It is the duty of a person with authority within an institution to prevent evil within that institution as far as his authority permits. The greatest responsibility rests with the government, which has full authority. It is not sufficient for the government merely to advise people. It is the government's duty to use all the means it has at its disposal to stop evil, using force if necessary.

Since the government is answerable for the highest stage of *al-Amr bi-al-ma'rūf wa al-Nahy 'an al-munkar*, which is to prevent evil by compulsion, the above-mentioned *Āyah* has stated this to be one of the main objectives of an Islamic government, and by using these two terms it has provided such a government with a clear basis for legislation and the use of executive powers.

As already stated, secular democracy has no fixed, permanent standard of good and evil. There are no values that are considered as sacred for all time to come. What the majority of people consider good at any given time is good, and what they consider evil is evil. This is why promotion of virtue is not a government objective. There are some values that are commonly agreed upon, like non-violence, respect for the individual, gender equality, and so on; but even these are vague terms, lacking any comprehensive definition, and their interpretation changes almost from day to day.

From the Islamic perspective, on the other hand, those things which the Holy Qur'an terms good or evil fall into two categories. The first comprises those which are determined through divine revelation, whether it be in the revelation that is recited (i.e. the Holy Qur'an) or not recited (i.e. the Sunnah of the Noble Prophet ﷺ). These virtues and vices are covered by injunctions whose status is eternal, unaffected by the ever-changing

times. Those in the second category are not laid down by revelation but are left to the communal conscience of the Muslims. According to a well-known Hadith:

مارآه المسلمين حسناً فهو عند الله حسن، وما رآه المسلمون قبيحاً فهو عند الله قبيح

'That which the Muslims consider to be comely is comely in the sight of Allah, and that which the Muslims consider as ugly is ugly in the sight of Allah.'¹

Some Hadith experts hold that this is actually a statement made by 'Abd Allāh ibn Mas'ūd رضي الله عنه, while 'Allāmah Ibn al-Jawzī رحمه الله in *al-'Ilal al-mutanāhiyah* traced it back to the Noble Prophet ﷺ.² The chain of this report contains a person known to have fabricated Hadiths, but despite that, jurists as well as scholars of *Uṣūl* have cited it as a *marfū'* report, perhaps because if a Companion says something that lies beyond the realms of analogy, it is difficult to say that he made this statement purely on the basis of his personal opinion. Hence, such a report is given the status of *marfū'*, meaning that it is taken as though this Companion had heard it directly from the Messenger of Allah ﷺ. On this basis, all jurists have taken this statement as an accepted principle. But they are also agreed that it refers to those matters that either are not mentioned in the Holy Qur'an or the Sunnah, or regarding which there is no clear injunction in either source. The reason for this is obvious: anything that the Holy Qur'an has declared to be bad cannot be declared by the body of Muslims to be good; similarly, anything that the Holy Qur'an has declared to be good cannot be declared by the body of Muslims to be bad.

From this it is clear that Islam has made two categorisations of virtue and evil. One is absolute good and absolute evil, the status of which can never be changed. This comprises all that has been declared as good or evil by the Holy Qur'an and the Sunnah and will remain so forever; no human thinking or law can ever change them. Examples are the order to perform the prayer, or the prohibition of taking interest, eating pork, or drinking liquor. The second category of good and evil consists of those

1 Ahmad ibn Hanbal, *Musnad: Mu'assasah al-risalah*, vol. 6, p. 84, reported by Ibn Mas'ūd رضي الله عنه.

2 Ibn al-Jawzī, *al-'ilal*; (Faisalabad 1981/1401) vol. 1, p. 280.

things which Islam has left to the collective conscience of the *Ummah*. It is up to them to decide if a thing is good or evil, and this is settled through mutual consultation. These are things which the *Shari'ah* has kept in the sphere of the permissible (*mubāh*), being neither *Fard*, *Sunnah*, *Harām*, or *Makrūh*. Examples include such matters as censuses, irrigation techniques, traffic laws, and weapons, any decisions about which will vary from region to region, and from era to era, according to the needs and requirements of the people. Also in this category are those matters which the *Shari'ah* allows to be determined by local norms and customs. Thus Islam has kept things in their proper place, unlike secular democracy, which leaves everything to passing trends in popular values and opinions. Keeping in view the limitations of the human mind, it is made to abide by the eternal value system of the *Dīn*, whereas if left on its own it would be likely to go astray. On the other hand, there are things which can be fully comprehended by the human mind. Instead of imposing restrictions here, Islam has allowed man scope to make decisions based on mutual consultation, keeping in view the current circumstances.

Establishing Justice and Equality

The fifth objective of an Islamic government mentioned in the Holy Qur'ān is to establish justice and equality. Allah Most High addressed Dāwūd ﷺ as follows in the Holy Qur'ān:

يَا دَاوُودُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُمْ بَيْنَ النَّاسِ بِالْحُقْقِ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ
فَيُضْلِلُكَ عَنْ سَبِيلِ اللَّهِ

Dā'ūd, We have made you a *Khalīfah* on Earth so that you may decide between people in truth. Do not follow caprice, lest it lead you astray from the Path of Allah. (38:26)

According to this Āyah, the Prophet Dāwūd ﷺ was ordered, in his capacity as a *Khalīfah*, to judge in truth between people. This teaches us that it is an essential part of *Khilāfah* to uphold justice when ruling on cases. This includes administering justice in courts of law, as well as basing any administrative decrees on justice and equality. Here it needs to be repeated that everyone tends naturally to interpret justice and equality according to his own understanding; but the Holy Qur'ān has laid down that equality and

justice are only that which Allah ﷺ and His Messenger ﷺ deem to be such. Any interpretation of justice that does not conform to the interpretation of Allah ﷺ and the Messenger ﷺ, or their injunctions, is not justice. It is nothing but following one's desires, which the above blessed Āyah contrasts with justice, and about which it warned that it will lead one astray from the Path of Allah ﷺ. When a decision is against the injunctions revealed by Allah Most High, then it is not justice but injustice and oppression. The Holy Qur'ān states:

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

And whoever does not judge according to what Allah has sent down, those are wrongdoers. (5:45)

Similarly, the Noble Prophet ﷺ was told:

وَإِنْ حَكَمْتَ فَاحْكُمْ بِمَنْهُمْ بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

And when you judge, judge between them in justice. Truly Allah loves those who are just. (5:42)

Elsewhere Allah ﷺ says:

فَاحْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ

So judge between them according to what Allah has sent down, and follow not their desires. (5:48)

To sum up, every government claims to establish justice, and thinks that the way it has adopted to do so is just and true, but real justice is only that which Allah ﷺ and His Messenger ﷺ have called justice. One manifest example for this is that secular democracy claims that it wants to establish equity and justice. This claim that 'all are equal in the eyes of the law' is presented with much fanfare. But practically, in many secular democracies, the head of the state is considered as above a number of laws. This point is mentioned even in their constitutional documents, that no one can initiate a legal process against the head of the state. The question is: What kind of justice is this supposed to be? But many arguments are being brought up in support of this view. This is not considered as 'against justice'. Islam, on the other hand, considers this completely against the concept of justice. The Noble Prophet ﷺ said:

انما اهلك الذين قبلكم انهم كانوا اذا سرق فيهم الشريف تركوه و اذا سرق فيهم
الضعيف اقاموا عليه الحد، وأيم الله لو ان فاطمة بنت محمد سرقت لقطعنا يدها

'Those before you were ruined precisely because when a noble person among them stole they would let him go, but when a person of weak standing stole they would punish him. I swear by Allah that if Fāṭimah, daughter of Muhammad, were to steal, I would cut off her hand.'¹

There are many instances in the history of Islamic government when not only was the head of the state tried in court, but the judge actually ruled against him. One incident relating to Sayyidunā ‘Alī رض is well-known. When he was the Commander of the Faithful, the Qādī, whose name was Shurayh, decided against him and in favour of a Jew. One of ‘Alī's رض coats of armour was lost. He saw it with a Jew who tried to sell it. The Jew claimed that the coat of armour was his own property. The matter was brought to Qādī Shurayh's رض court. The Qādī asked the Caliph رض to produce witnesses. ‘Alī رض consequently presented one witness named Qanbar, and one of his own sons as the second witness. Qādī Shurayh said: 'A son's evidence in favour of his father is not acceptable.' He then decided in favour of the Jew.²

This incident took place in the time of the Rightly-Guided Caliphs, but even in after that, there were many instances of a similar nature. In the court of Qādī Khayr ibn Na‘īm رض, there was a case in which the then Caliph, ‘Abd al-Malik ibn Marwān brought against his paternal cousin. When the court proceedings were about to start, the Caliph wanted to sit with the Qādī on his mat, but Qādī Khayr told him to get up and sit with his cousin.³

The wife of Abū Ja‘far Mansūr brought a case against her husband in the court of Qādī Ghawth ibn Sulaymān رض. She sent her representative to the court. The Qādī ordered the Caliph to sit on the floor with his wife's representative. Then, after examining the matter, he decided against the Caliph.⁴

Similarly, in some democratic nations, the head of state has the right to pardon any criminal he pleases, or to alleviate his punishment. From the constitutional viewpoint, he does not usually even need to state a reason. Through the exercise of this right, many hardened killers have been par-

1 Muslim, *Šaḥīh, Kitāb al-Ḥudūd; bāb qat’ al-sāriq*.

2 al-Wakī‘, *Akhbār al-qudāh*, p. 361; *Fī akhbār al-Qādī Shurayh*.

3 al-Kindī, *Kitāb al-Wulāh wa al-qudāh*, p. 352.

4 al-Kindī, *ibid.*, p. 375.

doned. It has even happened, strange though it may seem, that a criminal whose crime has been proven and who has been sentenced by a court after lengthy proceedings, investigations and evidence, whose case, in travelling from the lower courts to the Supreme Court, has cost hundreds and thousands of rupees, and whose sentence has been confirmed by all courts, is suddenly pardoned by the President, who, completely brushing aside all previous proceedings, acts merely according to his own understanding. It is not hard to see how much justice there is in this. The declaration by the Noble Prophet ص which we cited above was made when an influential noblewoman had committed theft, and other members of her tribe tried to intercede for her through the mediation of Sayyidunā Usāmah ibn Zayd رض who was very dear to the Noble Prophet ص to secure a pardon for her. The Messenger of Allah ص, however, was greatly displeased and said: 'Even if my own daughter were in her place, I would cut off her hand.'

Apart from that, citizens of most secular democratic countries are, in matters of personal law, judged by one and the same law, regardless of their religion. This means that in matters of marriage, divorce, inheritance and testaments, many people are forced to act against the requirements of their religion. That is, on one hand secularism claims that in it everyone is free to act according to his religion, but practice is that in matters of marriage, divorce, inheritance and testaments, followers of a certain religion are not free to practice their religion. In Western countries, people are forced to abide by the laws of the country in these matters, even if these are not according to their religion. This too, is gross injustice. On the other hand, an Islamic government gives the followers of different religions to practice their religion in these matters. It has been said: 'Leave them be to act according to their religion.'¹

In an Islamic government, non-Muslim subjects are bound to follow the country's general laws, but in matters of marriage, divorce and inheritance, things that are related to a person's belief, they are free to act according to their religion.

1 *al-Taqrīr wa al-taḥbīr*, vol. 2, p. 310; *Faṣl fi sharā’i al-rāwī*.

KHILAFAT IS AN ACCOUNTABILITY, NOT A RIGHT

The teachings of the Holy Qur'an and the Sunnah tell us that government is an accountability. It is not a right for the attainment of which man should strive. The Messenger of Allah ﷺ said:

الإمام راعٍ ومسؤلٍ عن رعيته

'The Imam (head of state) is a shepherd, and he is accountable for his flock.'¹

The necessary outcome of this concept is that government should be considered as such an accountability and responsibility which one should better avoid. But if one has to shoulder it due to a necessity, then one should take it over, considering it as a trust and responsibility. In a Hadith comes that Sayyidunā Abū Dharr al-Ghifārī رضي الله عنه once asked the Messenger of Allah ﷺ for a post in the government. To this, the Messenger of Allah ﷺ replied:

يَا أبا ذرِ إِنَّكَ ضَعِيفٌ وَإِنَّهَا أَمَانَةٌ وَيَوْمَ الْقِيَامَةِ خَزِيٌّ وَنَدَامَةٌ إِلَّا مَنْ أَخْذَهَا بِحَقِّهَا
وَادِيُّ الَّذِي عَلَيْهَا فِيهَا

'Abū Dharr, you are weak, and it is a trust. On Judgement Day it will be a source of shame and remorse, except for one who takes it rightfully and discharges the responsibilities it entails.'²

And Abū Dā'ūd relates a Tradition according to which the Messenger of Allah ﷺ said:

يَا أبا ذرِ إِنِّي أَرَاكَ ضَعِيفاً وَإِنِّي أَحُبُّ إِلَيْكَ مَا أَحُبُّ لِنَفْسِي لَا تَأْمُرْنَّ عَلَيْيِ اثْنَيْنِ وَلَا
تَوْلَيْنَ مَالَ يَتِيمٍ

'Abū Dharr, I think you are weak, and I like for you what I like for myself. Be sure never to become leader of [even] two people, and not to accept responsibility for an orphan's property.'³

It is reported from Sayyidunā Abū Hurayrah رضي الله عنه that the Messenger of Allah ﷺ said:

انكم سترحصون على الامارة وستكون ندامة يوم القيمة، فنعم المرضعة وبش
الفاطمة

'You are avid for leadership, but it will be a [source of] regret on the Day of Judgement. How good is the wet-nurse, and how bad the one who weans!'¹

This expression means that when one gets a post of leadership and government, it may at first appear attractive; but once one is taken to account for it, whether in this world or in the Hereafter, one will regret having voluntarily assumed such a great responsibility.

This is why the Messenger of Allah ﷺ put his hands on Sayyidunā Miqdam ibn Madikarab's رضي الله عنه shoulders and said:

أَفْلَحْتَ يَا قُدَيْمَ إِنْ مَتَّ وَلَمْ تَكُنْ أَمِيرًا وَلَا كَاتِبًا وَلَا عَرِيفًا

'Dear Qudaym, you will have done well should you die without having ever been a leader, a scribe, or a representative.'²

In today's world, governance is considered a right and a source of benefit. If a person gets a post of leadership, this is deemed good fortune, and if not he is considered deprived. The Holy Qur'an and the Sunnah, however, have cautioned man from the beginning not to think of it as a benefit. Far from being a bed of roses, it is nothing but thorns. This is why the Rightly-Guided Caliphs would tremble at the very thought of it. Sayyidunā 'Umar's رضي الله عنه statement in this regard is well-known:

لَوْمَاتُ جَمْلٍ ضِيَاعًا عَلَى شَطَّ الْفَرَاتِ لَخَشِيتُ أَنْ يَسْأَلَنِي اللَّهُ عَنْهُ

'Even if a camel should die, lost on the banks of the Euphrates, I would fear that Allah might ask me about it.'³

Shortly before his martyrdom, when people praised the Caliph 'Umar al-Fārūq رضي الله عنه he said:

وَدَدْتُ أَنْ ذَلِكَ كَفَافٌ لَا عَلَيْهِ وَلَا لِي

1 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Jum'ah*, Hadith no. 893.

2 Muslim, *Ṣaḥīḥ*, *Bāb Karāhiyyat al-imāmah bi-ghayr darūrah*, no. 1825.

3 Muslim, *Ṣaḥīḥ*, *Bāb Karāhiyyat al-imāmah bi-ghayr darūrah*, no. 1826.

1 al-Bukhārī, *Ṣaḥīḥ*; *kitāb al-iḥkām*, *bāb mā yukrahu min al-ḥiṣr 'alā al-imārah*, no. 7148.

2 *Jāmi'i al-uṣūl*; from Abū Dā'ūd, *Sunan*, and Ahmad ibn Ḥanbal, *Musnād*. Qudaym is a diminutive form of the name Miqdam, here used as a sign of affection.

3 Ibn Sa'd, *Tabaqāt*, vol. 3, p. 284; *Dhikr istikhlāf 'Umar*.

'I would love that [responsibility] to be over, [recorded] neither against me or in my favour.'¹

We read in al-Ṭabarī's *History* that somebody once suggested to 'Umar رض that he appoint his son 'Abd Allāh ibn 'Umar رض as Caliph. 'Umar expressed his displeasure and said: 'Am I to appoint as Caliph someone who does not even know how to divorce his wife?' Then he said:

بحسب آل عمر ان يحاسب منهم رجل واحد ويسأل عن امة محمد، لقد جهدت
نفسى وحرمت اهلى وان نجوت كفافا لا وزر ولا اجر انى لسعيد

'It is enough for the family of 'Umar for one of them to be held accountable and to answer for the *Ummah* of Muhammad صلی الله علیه و آله و سلّم. I put myself to this hardship and have made it unlawful for the members of my family. I shall be fortunate if I escape without any sin and without any reward.'²

CHAPTER THREE

THE PRINCIPLES OF
FORMING A GOVERNMENT

Islam has provided some principles concerning the establishment of government on the lines of the above concepts and objectives. These principles are as follows.

1. IT IS NOT PERMISSIBLE TO SEEK A RULING POSITION

Ruling positions and government are a responsibility, not a right. The ruling to be derived from this principle is that it is not permissible to seek such a post, for it is not something that one ought to strive to attain or hanker after. A Hadith relates that the Messenger of Allah صلی الله علیه و آله و سلّم told 'Abd al-Rahmān ibn Samurah رض:

لَا تَسْأَلُ الْأَمْارَةَ فَإِنْكَ أُوتِيَتْهَا عَنْ مُسْأَلَةٍ وُكِلْتُ إِلَيْهَا، وَإِنْ أُوتِيَتْهَا مِنْ غَيْرِ مُسْأَلَةٍ
أُعْنِتُ عَلَيْهَا

'Do not ask for leadership, for if you are given it because of having asked for it, you will be left in [sole] charge of it; but if you are given it without asking, you will be helped in it [by Allah].'¹

The Messenger of Allah صلی الله علیه و آله و سلّم said something similar about the post of *Qādī*, which is further elucidated by the above Tradition. It is related by Anas رض that the Messenger of Allah صلی الله علیه و آله و سلّم said:

1 al-Bukhārī, *Ṣaḥīḥ*, *Bāb Qiṣṣat al-bay'ah wa al-ittifāq 'alā 'Uthmān bin 'Affān*; Hadith 3700.
2 al-Ṭabarī, *Tārīkh*, vol. 2, p. 570.

1 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Imān*; Hadith 6622.

من ابْتَغَى الْقَضَاءَ وَسَأَلَ فِيهِ شَفَاعَةً وَكُلَّ الَّيْ نَفْسَهُ وَمَنْ أَكْرَهَ اللَّهَ عَلَيْهِ
مِلْكًا يَسْدِدُهُ

'Whoever wants to be a Qādī and asks people to recommend him shall be left to his own devices; but whoever is forced to be one, Allah shall send an angel to keep him straight.'¹

This clarifies the meaning of 'being left to one's own devices'. If someone obtains this post as a result of his own efforts, having induced people to recommend him, it is as though he were told: 'This is now your own problem and that of your government. We shall not help you in this matter.' This is indeed a harsh warning, to anyone who believes that nothing can be done without the help of Allah ﷺ. May Allah protect us!

Abū Mūsā al-Ash'arī reported that two men from his tribe asked the Noble Prophet ﷺ for a leadership post. To this, he ﷺ replied:

إِنَّا لَا نُولِي هَذَا مِنْ سَأَلَهُ وَلَا مِنْ حَرَصٍ عَلَيْهِ

'We do not give this to those who ask for it or are avid for it.'²

This Hadith clearly shows that it is not permissible to ask for a post of leadership. Anyone who asks for one does not in fact deserve it. In another Hadith, related by 'Abd Allāh ibn 'Umar ﷺ we read:

تَجِدُونَ مِنْ خَيْرِ النَّاسِ أَشَدَّهُمْ كَرَاهِيَّةً لِهَذَا الشَّانِ حَتَّى يَقُعُ فِيهِ

'You shall find some of the best of people to be those who most dislike this business until it falls upon them.'³

Some scholars have concluded that it is permissible to ask for a government post on the basis the Prophet Yūsuf's ﷺ words:

اجْعَلْنِي عَلَى حَزَابِ الْأَرْضِ إِنِّي حَفِظُ عَلَيْمٌ

Put me in charge of the treasures of the land. I am a most knowledgeable steward. (12:55)

¹ al-Tirmidhī, *Sunan*, *Kitāb al-Ahkām*; Abū Dā'ūd, *Sunan*, *Kitāb al-Aqdiyah*; Ahmad ibn Hanbal, *Musnād*.

² al-Bukhārī, *Ṣaḥīḥ*, *Bāb Mā yukrah min al-ḥiṣṣ 'alā al-imārah*.

³ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Manāqib*.

Some have even gone so far to use this Āyah as justification for contesting elections and publicising their own merits, saying that Yūsuf ﷺ not only asked for this post, but even mentioned his own qualities and capabilities himself. This argument, however, is not correct, because the ruler of Egypt had already decided to give Yūsuf ﷺ a position in the government:

وَقَالَ الْمَلِكُ اثْنَوْنَى بِهِ أَسْتَخْلِصُهُ لِنَفْسِي ۝ فَلَمَّا كَلَمَهُ قَالَ إِنَّكَ الْيَوْمَ لَدَيْنَا مَكِينٌ أَمِينٌ

And the King said: 'Bring him to me. I shall attach him to my person.' Then when he came to him, he said: 'From today you shall be with us, with authority and in security.' (12:54)

So the king did not give Yūsuf ﷺ a post because he had asked for it, but of his own accord. It was already clear to him that the king was going to give him a post; the only question to be settled was which responsibility should be entrusted to him. On this occasion, Yūsuf ﷺ said: 'If you have already decided to give me a post, put me in charge of the agricultural produce.' He had not sent a petition from prison to be given any kind of post, nor had he anyone to recommend him. Hence this verse provides no proof of the permissibility of asking for a post.

The second thing is that, as mentioned above, the actual ruling of the Holy *Shari'ah* is that it is not permissible to ask for a leading or ruling position on one's own behalf. But there are some exceptions, as we shall see—and Yūsuf's ﷺ condition can certainly be considered exceptional. There is a Hadith which can be used as an argument to permit such a request. Imam Abū Dā'ūd records from Sayyidunā Abū Hurayrah ﷺ the following:

مَنْ طَلَبَ قَضَاءَ الْمُسْلِمِينَ حَتَّى يَنَالَهُ ثُمَّ غَلَبَ عَدْلُهُ فَلَهُ الْجَنَّةُ

'One who seeks office as a judge of Muslims and acquires it, and whose justice prevails over his injustice, shall have Paradise.'¹

This Hadith uses the word *talaba*, meaning 'seeks' or 'asks for'. But first of all it should be kept in mind that the chain of transmission of this Tradition is disputed, and then it is quite possible it refers to the exceptional conditions in which one may ask for a post. On the one hand, there are several Traditions which clearly indicate that it is forbidden to ask for a post; on

¹ Abū Dā'ūd, *Sunan*, *Bāb fi al-qādī yukhṭi' wa yuṣīb*.

the other, there is this one which appears to permit it. In order to reconcile these two Hadiths, the honourable scholars have said that each is to be put into practice in its own right. According to the literal injunction, it is not permissible to ask for a post of leadership. Sometimes, however, there are situations in which a person knows instinctively that if he does not ask for a certain post it will go to someone who will not fulfil the rights of the people, and irreligiousness will spread. In such a pressing situation it is permissible to ask for a post, provided that one desires betterment and reform rather than fame and prestige. Qādī Abū Ya'lā al-Hanbālī ﷺ authored a book on politics entitled *al-Siyāsah al-Shar'iyyah* in which he adopted this very stance, which was later corroborated by other scholars. Mawlānā Zafar Ahmad 'Usmānī ﷺ gives preference to this point of view in his work *I'lā' al-Sunan*. To sum up, the basic principle is that it is not permissible to ask for a post except under special circumstances, when it is clear that if a certain deserving individual, whose intentions are sound, fails to ask for a particular post, a non-deserving person is likely to usurp it, with pernicious consequences. That is the sole exception. And truly Allah knows best.

AN ALTERNATIVE TO CANDIDACY IN ELECTIONS

Now an important question arises: if it is not permissible to ask for posts in government, then what should elections look like in today's world? This question arises because in this age the whole framework of elections is based on candidacy. If there is no candidacy or demand then how are people supposed to vote, and for whom?

Before answering this question, one needs to understand that once a certain method becomes universally accepted, people tend to be unwilling to consider anything different and to regard every other method as impracticable. However, once one has detached oneself from the pressure of one's surroundings, the alternative does not seem so impracticable at all. Even in the present age, different countries have different electoral systems and procedures. These include proportional representation, the second ballot system, and the transferable vote system. Hence it is not correct to consider a single method to be the only one possible. If one understands that it is not good to ask for a government post for oneself, and that doing

so has corrupted political systems, it is not as difficult to find an alternative as is commonly supposed.

For example, instead of candidacy, the election system could be redesigned in such a way that each electoral circle is called to submit a list of representatives selected by them. The characteristics of these representatives should be determined beforehand, as well as their eligibility; on the basis of such factors as, for example, their education, the social services they have rendered so far, and their practical experience. There should be also some guidelines regarding their character. Once the circle has produced a list of people who match these criteria—say five hundred or one thousand—the election commission is to check whether these nominations are correct: that is, whether the individuals concerned really belong to that circle, whether they meet the criteria decided upon, whether they are really five hundred or one thousand in number, and whether everything was conducted openly and transparently, to ensure that no fraud has taken place. Once all these things have been ascertained, the papers of representation can be approved. If more than one name appears on the list, there should be a vote to select one of them as representative.

Then, instead of the representative going about and importuning people to vote for him by making all kinds of promises, degrading his rival, and spending millions of rupees on this, as is common practice during election campaigns, nowadays, the election commission could use the media to introduce that person to the masses. If need be, an interview with that person could be broadcast, to inform the people who has been put forward to act as a representative of which circle, what qualifications they have, their lives and careers, their level of insight and understanding, their honesty, how much they know of the problems of the public, and so on.

The situation in some countries today is that candidates for political office not only show people 'greener pastures' by advertising their own claimed virtues, but also spends millions of rupees for that purpose. Under such a system, no one can stand as a candidate unless they have millions of rupees to squander. A member of the middle classes cannot even dream of being a candidate. As for those who do have enough money to stand for office, it is not unusual for them to consider the cost of their electioneering to be a sound investment, the expectation being that thanks to the prevalent bribery and corruption, once elected they can make far more money

than they spent. That is why, at least in countries like Pakistan, it is almost impossible in practice for uncorrupt people to get into the government.

If the above system were adopted instead of candidature, it would be the responsibility of the electoral commission to introduce nominees to the public in an impartial manner. If nominees were forbidden to campaign through any means other than the electoral commission, a great number of evils could be held in check. Similarly, any 'polling camps' set up outside polling stations should not belong to the nominees. They should be run and manned by the election commission, and voters should go there for their ballot papers. Nominees should be prevented from trying to influence or pressurising voters. There are countries in which canvassing is not practised; what happens instead is that once the candidates' names are registered, they are called on radio and television to give interviews, and that is all! There are no rallies, no advertisements, no publicity, no 'tweeting', no scrawling slogans on walls—nothing.

The sad fact is that in the Republic of Pakistan, the feudal lords have taken control over many of our people, who cast their votes at their behest or under their influence. But if the 'weapons' they use were seized, the results of the election could truly reflect true public opinion. The electoral circle system in use in our country dictates that only one person from a given electoral circle can be elected as member of the parliament or provincial assembly. Sometimes it happens that there are ten candidates in a circle, and the one who receives the largest number of votes is considered to be elected even if, compared to the total number of votes cast, he is very far from enjoying a true majority. This is what is sometimes called the 'first past the post' system, the deficiencies of which can be illustrated using a simple example. Suppose that nine out of ten candidates received one thousand votes each, whereas the tenth received two thousand. The tenth candidate will be declared the outright winner, even though nine thousand people actually voted against him and only two thousand for him. On the other hand, if one were to permit more than one member per election circle, whether that be done through transferable voting or non-transferable voting, the voting system could be made considerably less unfair and more representative. If, for example, it were decided that four people from a large election circle could be elected, then after the election four candidates would be considered as elected: the one with the most votes would

be considered as first choice, the one with the second most votes as the second choice, and so on.

As I have said already, Islam has provided basic guidelines, leaving it to the intelligentsia of each time to arrange the details in the light of their understanding and experience. The situation here is the same. Islam has forbidden people to demand positions of political leadership, and it has imposed the principle of consultation; but rather than setting out in detail how these principles are to be put into practice, Islam is flexible enough to allow the intelligentsia of each age to determine the details. The above basic outline given above could be supplemented with further details by people of learning. All this shows that it is simply not true to say that it is impossible to conduct elections without having people demand leadership posts.

2. THE ATTRIBUTES AND ELIGIBILITY OF A LEADER

In the present age, democracies rarely lay down any criteria of eligibility for the head of government or the members of parliament. As a rule, it is normally sufficient that the holder of such an office be a full citizen of the country and that their name be found on the electoral register. In order to be included in the latter there will be a minimum age. That apart, there are usually no criteria regarding a person's education, experience or character. Any person elected with a majority, even under the 'first past the post' system, becomes eligible to head the government or to function as a member of the parliament. As a result, people who are ignorant or of dubious character sometimes attain high office, and the stories of their misdoings are told for a long time after their departure. Stories of the late John F. Kennedy's misdoings are put into print even today. Kennedy was a very powerful American president who, for the first time, prevailed over Russia. This is only because there are no criteria that would render a person eligible to run the government.

Islam has the distinction of being the first religion or belief system to lay down what characteristics a person aspiring to rule should have, so that anyone who lacks them is unfit to become a governor or Caliph. The scholars have discussed these characteristics in great detail. The gist of these discussions is given below.

The first condition: Being sane and mature

The first condition is obvious. The person needs to be mature and sane (in his right mind).

The second condition: Being Muslim

The second condition is that the ruler needs to be a Muslim. The Holy Qur'an tells us clearly:

لَا يَنْهَا اللَّهُ عَنِ الظَّالِمِينَ

My Covenant does not include the wrongdoers. (2:124)

Another Ayah states:

إِنَّ الشَّرِكَ لَظُلْمٌ عَظِيمٌ

Truly, associating partners with Allah is a tremendous wrong. (31:13)

Hence according to the Holy Qur'an, a person who does not believe in Allah ﷺ as He should be believed in but has committed disbelief and idolatry, has incurred the greatest of all wrongs. The previous Ayah warns that Allah's ﷺ Covenant (of granting *Khilāfah*) does not extend to wrongdoers.

Furthermore, there is also a point of logic to consider: where there is an Islamic government it ought to be headed by a Muslim, since the objectives of government enumerated above cannot be achieved except by a Muslim; a non-Muslim would not be in a position to achieve them. But when this point is raised today's environment, which is steeped in secular democracy, all kinds of objections are raised. While the constitution of Pakistan was being drafted, secular circles objected that since there were also non-Muslims living in the country, it would be a gross injustice to them to impose such a condition.

That objection, however, is based on the theories of secular democracy and nationalism, which have been sufficiently discussed on the previous pages. It is strange that many countries that are secular democracies have laid down that their head of government must follow one religion or the other. The King or Queen of England, for example, can only be a Protestant Christian. On the one hand, there is the claim to uphold secular democracy, which requires that the ruler not be bound to follow any particular religion. On the other hand, it is required that the King of England belong to the

Protestant Church; moreover, he has to belong to the Church of England, failing which he cannot be king. There are also many other states which, despite their claims to be secular democracies, have an official state religion, such as Roman Catholicism. Argentina, Colombia, Costa Rica, Malta, Panama, all maintain that their state religion is Roman Catholicism, which their head of state must profess. Certain other countries, like Denmark, Norway, Iceland and Sweden, require that their head of state belong to the Lutheran Church. It is not sufficient for him to be a Christian. He must belong to a specific sect, in this case the Protestant one; not just that, he must belong to a particular branch of that sect—the Lutheran Church. In Greece, the head of state must belong to the Greek Orthodox Church. In Israel the head of state must be a Jew; in Nepal, he must be a Hindu. About the last-mentioned, however, it can be said that they are religious states, not fully secular democracies. However, all the above-mentioned states have somehow laid down that their leader must follow a certain religion. It is true that these countries do not have any laws that require the head of the executive, that is the prime minister, to follow any particular religion. The reason given is that the country's population includes adherents of various religions, so that to require the prime minister to follow any particular religion would be an injustice. However, the same argument could be made for the head of the state—that is, the king or the president—but in that instance the injustice factor is not taken into consideration.

Islam calls itself openly an Islamic government, so it would be quite logical for it to require that the head of state or prime minister be a Muslim. When the constitution of Pakistan was being drafted, this issue was debated; but finally, by the Grace of Allah ﷺ, it was laid down that the Prime Minister and the President must be Muslims.

The third condition: Being male

The third condition that has been laid down is that the ruler must be male. This is proven by the following Hadith:

لَنْ يَفْلُحَ قَوْمٌ وَلَوْا امْرِهِمْ امْرَأَةٌ

'No nation has ever prospered when it made a woman its ruler.¹

¹ al-Bukhārī, *Ṣaḥīḥ, Bāb Kitāb al-Nabī ilā Kisrā wa Qayṣar.*

The Messenger of Allah ﷺ made this statement when the Iranians had made a woman their ruler. The Messenger of Allah ﷺ further said:

إذا كانت امرأةكم خياركم واغنيائكم سمحائكم واموركم شوريٰ بينكم فظاهر الأرض خير لكم من بطنها وإذا كانت امرأةكم شراركم واغنيائكم بخلائكم واموركم الي نسائكم فبطن الأرض خير لكم من ظهرها

'When your leaders are the best of you, your wealthy are the generous among you, and your affairs are [settled by] mutual consultation, the earth shall bring forth from its belly the very best for you. When your leaders are the worst of you, your wealthy the miserly among you, and your affairs are entrusted to your womenfolk, the belly of the earth will be better for you than its back.'¹

The term for 'leadership' in the context of the Holy *Shari'ah* is 'Imamate'. Imamate is of two kinds: minor and major. Minor Imamate refers to the leading of prayers, while major Imamate refers to the leading of the state. It is agreed by all juristic authorities—as far as I am aware—that a woman cannot take charge of the minor Imamate: that is, she cannot lead men in prayer. Since a woman cannot take charge of the minor Imamate, it follows that she cannot take charge of the major Imamate. *Imdād al-Fatāwā*, a major compilation of juristic rulings, contains a fatwa by *Hakim al-Ummah* Mawlānā Ashraf 'Alī Thānvi ﷺ on the basis of which some people claim that he ruled that a woman may act as a leader. This is a mistaken claim, however: in the said fatwa he agreed that a woman could not act as a leader. He said that in the present system of democracy, the Prime Minister is not a leader. The actual leader is the parliament, and the Prime Minister, being part of that parliament, cannot be called a leader. Hence the Mawlānā fully agreed that a woman cannot become a leader. However, in one matter he voiced the opinion that the Prime Minister is not a leader in the true sense. Here there appears to be some inconsistency, because even if the Prime Minister is not the head of the state, he is nevertheless the head of the executive and the head of the government. If anyone disagrees with Mawlānā Thānvi in this matter, the dispute will not be about the injunctions of the Holy *Shari'ah*, but about a question of definition. My respected brother

¹ al-Tirmidhī, *al-Jāmi'* [al-sahīh], *Bāb* 78; classed as *Gharīb*.

Mawlānā Mufti Muḥammad Rafī' Uthmānī has published a booklet which contains a thorough investigation of the whole matter.

Nowadays, the slogan of gender equality is raised with so much force that saying anything against it amounts to exposing oneself to the severest criticism and reproach. Under such circumstances, when it is said that a woman cannot become a leader, the supporters of modernism immediately let loose a tempest of objections. If one were to start a discussion here and now about the status of a woman in society, it would probably become lengthy. However, it would still not be out of place to mention one incident in this connection. A female representative of *Time* magazine called upon me, without any prior appointment, to interview me, expecting me to answer her questions about the leadership of women. I said to her that answering her questions on this subject would be quite useless, since neither her concept of heading a government nor her view of women was correct, and that our standpoints on these subjects were diametrically opposed. When she heard this she was utterly amazed and said: 'Now I shall not leave until you have explained the matter.' I told her: 'Your concept of heading a government is not correct because according to your perception, heading a government is an advantage and a privilege. Anyone who gets this advantage, this privilege, is considered extremely fortunate, while those who do not are considered deprived; and if it is decided about someone that they can never become a leader, it is as though they have been deprived of a basic human right. The teachings of Islam, on the other hand, tell us that government and leadership are neither a right nor a privilege but an immense burden of responsibility. Those who are made to take up this burden deserves to be pitied, while those who are not are extremely fortunate.' I have already mentioned the Hadith in which the Messenger of Allah ﷺ said to Sayyidunā Miqdam ibn Ma'dikarib ﷺ: 'Qudaym, you will have done well should you die without having ever been a leader, a scribe, or a representative.' Here, a person who never has anything to do with governmental affairs is considered fortunate. Then I related the incident in which Sayyidunā 'Umar al-Fārūq ﷺ when it was suggested that he appoint his son 'Abd Allāh ibn 'Umar ﷺ as Caliph, said: 'It is enough for one of my family' (by this he meant himself) 'to have shouldered this burden. I do not want to put this yoke around the neck of any of my children.'

¹ al-Tabārī, *Tārīkh*, vol. 2, p. 570.

'Once a person realises that this is not a bed of roses but of thorns, that it is not a privilege but a yoke, then one's perception of who is to be considered as fortunate will change. Is that person fortunate who is made to wear this yoke, or the one who is not burdened with it? You say that Islam has deprived woman of her right to govern, but when one has the Islamic concept of government in mind, one will realise that Islam has done woman a great favour by sparing her such a grave responsibility. That is why I said that your ideas about government are completely different from the one presented by Islam.'

'And when I said that your concept of woman is not correct, this can be explained as follows. You think that there is no difference between the purpose of a man's life and a woman's. But even if one were only to consider a woman's physical form, it is clear that her purpose to life is different from that of a man. Islam teaches that women form the basis of a peaceful, pleasant family life. Families are the building blocks of communities, and communities make up societies and civilizations. Nations are nurtured in the laps of women. If a woman is detached from her true purpose in life, the result will inevitably be that the family system will be disrupted, as it has been in the West. And, although there is much concern about this situation, the West can find no way to strengthen its family system again.'

These observations amazed that journalist. Before the interview I had imposed the condition that if she did publish it she should do so without omitting anything, and that I reserved the right of litigation against her should she violate that condition. That is why, I believe, she never published that interview.

Anyway, it is undeniable that the West has made some major mistakes in determining woman's purpose of life, and the fact has been acknowledged by a number of Western writers. The last president of the Soviet Union, Mikhail Gorbachev, has acknowledged in his book *Perestroika* that bringing women out of their homes brought some economic benefit but has led to a disruption of the family system—and that the question now is how this is to be remedied.

The fourth condition: Being a Qurayshī

The fourth condition that is mentioned in our books regarding leadership and imamate is that the leader must belong to the tribe of Quraysh. The

proof for this is the Tradition related by 'Abd Allāh ibn 'Umar رض according to which the Messenger of Allah صلی اللہ علیہ وسالم said:

لَا يزال هذا الامر في قريش ما بقي منهم اثنان

'This concern shall not cease to be with the Quraysh, for as long as there are [at least] two of them left.'¹

Sayyidunā Mu'āwiyah رض related that the Messenger of Allah صلی اللہ علیہ وسالم said:

ان هذا الامر في قريش لا يعاديهم احد الا كبه الله علي وجهه ما اقاموا الدين

'This matter shall be with the Quraysh, and one who is their enemy shall be flung on his face by Allah, as long as they establish the true religion.'²

It has further been related by 'Abd Allāh ibn 'Umar رض that the Messenger of Allah صلی اللہ علیہ وسالم said:

الناس تبع لقريش في هذا الشأن مسلمهم تبع لمسلمهم وكافرهم تبع لكافرهم

والناس معادن خياراتهم في الجاهلية خياراتهم في الاسلام اذا فقهوا

'The people shall follow the Quraysh in this matter. Muslims shall follow their Muslims, and infidels shall follow their infidels. And people are [like] mines (i.e. they have different characteristics). The best of them in [the Time of] Ignorance are the best of them in Islam, once they possess understanding.'³

Once a person from the tribe of Rabī'ah said in front of Sayyidunā 'Amr ibn al-'Āṣ رض that the Quraysh should restrain themselves, for otherwise Allah Most High would entrust this matter [of government] to the other Arabs. 'Amr رض replied:

كذبَتْ، سمعت رسول الله صلی اللہ علیہ وسالم يقول: قريش ولاة الناس في الخير

والشرالي يوم القيمة

'You have lied. I heard the Messenger of Allah صلی اللہ علیہ وسالم say: "The Quraysh are the leaders of mankind, for good and for ill, until the Day of Resurrection."⁴

1 al-Bukhārī, *Ṣaḥīḥ*; *kitāb al-manāqib*; *bāb manāqib Quraysh*.

2 al-Bukhārī, *Ṣaḥīḥ*; *Ibid.*

3 al-Bukhārī, *Ṣaḥīḥ*, *kitāb al-manāqib*; *bāb...* vol. 4 p. 178.

4 al-Tirmidhī, *Sunan*; *abwāb al-fitān*, *bāb mā jā'a anna al-khulafā'a min Quraysh*.

Sayyidunā Jābir ﷺ related the following saying of Allah's Messenger ﷺ:

الناس تبع لقريش في الخير والشر

"The people will follow the Quraysh, in good and in evil."¹

From these Hadith can further be argued that it is necessary that the ruler belongs to the Quraysh. This condition is usually mentioned in books on *fiqh* (jurisprudence) and 'aqā'id (doctrine). Qādī 'Iyād even said that there was consensus about this between the entire *Ummah*, that the leader must belong to the Quraysh, and that apart from the Khawārij and the Mu'tazilites, no one differed on this point.

However, Ḥāfiẓ Ibn Ḥajar al-Asqalānī ﷺ debated this issue in his work *Fatḥ al-Bārī*. Similarly, 'Allāmah al-Māwardī ﷺ in *al-Āḥkām al-sultāniyyah*, his famous treatise on government, counts this point among the conditions concerning which there is a difference of opinion. He states that scholars hold different opinions as whether or not it is a prerequisite for the Imam to be a Qurayshī. 'Allāmah Anwar Shāh Kashmīrī ﷺ wrote in his *Fayd al-Bārī* that there is a Tradition narrated by Imam Abū Ḥanīfah ﷺ stating that he does not consider it a prerequisite that a leader belong to the Quraysh; the source which he cited for this was *al-Burhān, sharḥ Mawāhib al-Rahmān*.² Again, 'Allāmah al-Ḥamawī ﷺ related, with reference to 'Allāmah al-Tarsūsī ﷺ, the view of Imam Abū Ḥanīfah and his disciples ﷺ that: لا يشترط في صحة 'تولية السلطان أن يكون قريشاً ولا مجتهداً ولا عدلاً' It is not a prerequisite for the validity of a ruler's government that he be of Quraysh, or be a *Mujtahid*, or be just.³

The same statement is quoted by 'Allāmah al-Rāfi'i in *al-Tāhrīr al-mukhtār*.⁴ However, this is to be understood as meaning that if a non-Qurayshī is appointed as Caliph and his rule is established, his *Khilāfah* shall be proper and valid, just as though it had been established through *Istīlā'* (استيلاء). But that in no way means that the people who are to appoint a Caliph do not need to keep in mind the conditions for *Khilāfah*. Some contemporary scholars have stated about Ibn Taymiyah ﷺ that he did not consider it a prerequisite for a leader to belong to the Quraysh (annotation to *al-Ghiyāthī*—see the next paragraph—by 'Abd al-'Azīm al-Dīb). But I

1 Muslim, *Ṣaḥīḥ, kitāb al-imārah, bāb al-nās taba'un li quraysh*.

2 See Anwar Shāh Kashmīrī, *Fayd al-Bārī*, vol. 4, p. 498.

3 al-Ḥamawī, *Sharḥ al-Ashbāh wa al-naẓā'ir*, Fann 3, *Qawā'id shattā*: vol. 2, p. 266.

4 al-Rāfi'i, *al-Tāhrīr al-mukhtār, Kitāb al-ṣalāh, Bāb al-Imāmah*; vol. 1, p. 68.

have not been able to find this view stated in any of Ibn Taymiyah's writings. Rather, what I found was the opposite: although none of the injunctions of Islam are based on ancestry, at times, keeping in view the majority, such injunctions have been made, including the Imam being from Quraysh.

Imām al-Ḥaramayn al-Juwainī ﷺ wrote in his *Irshād* that the condition of being a Qurayshī is not fully agreed upon.¹ Another important source is the same author's book *Ghiyāth al-umam fi tayyārat al-żulam*, sometimes referred to as *al-Ghiyāthī* for short, written at the behest of the vizier Nizām al-Mulk. It contains many valuable discussions about the political injunctions of Islam which are not to be found in other books. From his discussion of the question as to whether the Imam must be a Qurayshī, it appears that he did not consider it an important qualification, and that he only considered it significant because it was a long-established tradition of the Muslim *Ummah*. Ibn Khaldūn, too, reported that it was Qādī Abū Bakr al-Bāqillānī's view that being of the Quraysh is not a prerequisite. However, in his *Tamhīd al-awā'il al-Bāqillānī* himself upholds the opinion that it is.²

Ḥāfiẓ Ibn Ḥajar al-Asqalānī ﷺ discusses this issue at length in *Fatḥ al-Bārī*, his famous commentary on the *Ṣaḥīḥ* of al-Bukhārī. He comments: 'It seems that Sayyidunā 'Umar ﷺ did not consider it necessary that the Amir belong to the Quraysh. The reason for this is that in the *Musnād* of Aḥmad there is a Tradition with an authentic chain of narrators according to which 'Umar ﷺ said before his death: "If Abū 'Ubaydah ibn Jarrāh were alive at the time of my death, I would appoint him Caliph, and if Mu'ādh ibn Jabal were alive at the time of my death, I would appoint him Caliph." Now, as far as Sayyidunā Abū 'Ubaydah ﷺ is concerned, it is known that he belonged to the Quraysh, but Sayyidunā Mu'ādh ibn Jabal ﷺ was not a Qurayshī; he belonged to the *Anṣār*.'

According to al-Ṭabarī, Sayyidunā 'Umar ﷺ also remarked: لو كان سالم مولى ابي حذيفة حين استخلفته فان سالماً ربي قلت سمعت نبيك يقول ان سالماً شديد الحب لله meaning 'If Salmān, the protégé (or freedman) of Abū Hudhayfah were alive, I would appoint him as Caliph; and if my Lord were to ask me about that, I would say: "I heard Your Prophet say: Truly Salmān loves Allah dearly!"'³

Salmān, the protégé of Abū Hudhayfah, was also not a Qurayshī (unless

1 al-Juwainī, *al-Irshād fi uṣūl al-i'tiqād*, p. 359.

2 al-Bāqillānī, *Tamhīd al-awā'il*, pp. 174 to 373.

3 al-Ṭabarī, *Tārikh*, vol. 2, p. 580.

one considers the relationship that comes into being on account of *Wala'* (see Glossary). Apart from this, Hāfiẓ Ibn Ḥajar Ḥaṣṣāb observed that it is difficult to claim that the *Ummah* has been continuously imposing this condition in practice, for besides the Mu'tazilites and the Khawārij there were many non-Qurayshī Caliphs among the Ahl al-Sunnah, such as Ibn al-As'ath, and in Andalusia Banū 'Ubbad and 'Abd al-Mu'min.¹

Some scholars have also inferred the permissibility of a non-Qurayshī acting as Caliph from the following Hadith: اسْمَعُوا وَاطِّبُوا وَإِنْ اسْتَعْمَلْ عَلَيْكُمْ 'Abd Ḥabībī kān rāsah zibīyah 'Listen and obey, even if an Abyssinian slave with a head like a raisin is put in charge of you.'² This Tradition, however, is not a very strong basis for the argument, because becoming a leader is one thing and being elected as a leader is quite another. It might be that a person usurps power, or that he becomes leader at a time when there is no man among the Quraysh who meets all the other prerequisites of *Khilāfah*. In that event it is unanimously agreed that the *Khilāfah* of a non-Qurayshī person is acceptable. Hence it is difficult to conclude from this that a non-Qurayshī person is permitted to become a leader on his own initiative. But the Tradition from Sayyidunā 'Umar Ḥaṣṣāb is no doubt a very strong argument. If being a Qurayshī were a prerequisite, Sayyidunā 'Umar would never have made such a statement.

On the other hand, those scholars who hold that being a Qurayshī is not a necessary condition say about Hadiths like 'الائمة من القریش' ('The Imāms are from the Quraysh') that these are statements (*Khabr*) and not orders (*Inshā'*); in other words, they do not imply that it is not permissible to make a non-Qurayshī person Caliph, but rather are an informative statement that in the future there would be leaders from among the Quraysh. Another Tradition states that 'After me there shall be twelve Caliphs, and they shall all be from the Quraysh.'³

'Allāmah Ibn Khaldūn Ḥaṣṣāb discussed this issue at length in his *Muqaddimah*, and he also puts forward another theory. He says that in fact the statement 'الائمة من القریش' ('The Imāms are from the Quraysh') is a legal ruling, and that a non-Qurayshī cannot become Caliph—but that this ruling is *ma'lūl bi-al-'illah* (linked to its specific cause), because Islam has not limited any

1 Ibn Ḥajar, *Fath al-Bārī* (N.p.: al-Maktabah al-Salafiyyah, n.d.), *Kitāb al-Aḥkām*, vol. 13, p. 119.

2 al-Bukhārī, *Ṣaḥīḥ*; Hadiths 693 and 7142.

3 Muslim, *Ṣaḥīḥ*, Hadith 4669.

of its rulings to a particular race or era. The specific factor to be kept in mind here is whether or not the person about to be appointed as Caliph, enjoys popularity, and whether or not the people are prepared to accept him as their ruler, not finding any difficulty in obeying him and accepting his authority. Ibn Khaldūn gave this quality in a people, which in his time was found among the Quraysh, 'aṣabiyyah ghālibah' (prevalent tribal solidarity). Although this term may sound suggestive of tribal bias or fanaticism, after reading the whole of Ibn Khaldūn's treatment of the subject one comes to understand that what he actually means is not racial bias but an inclination that makes a people willing to listen to and obey a particular individual. The essential point, in his view, is that the aspiring leader should be from a group that enjoys sufficiently widespread trust and respect for the people to be happy to follow him on that basis. In those days the Quraysh enjoyed that status, for the Arabs could not agree on any other leading tribe but them. This, in Ibn Khaldūn's view, is the reason why it has been said that the leaders should be from among the Quraysh.¹

This theory supported by a narrative from early Islamic history. It is related that Abū Bakr al-Ṣiddīq Ḥaṣṣāb said in a gathering of Thaqīfah Banū Sā'idah about making the Quraysh Caliph: لَنْ يَعْرُفَ هَذَا الْأَمْرُ إِلَّا لِهَذَا الْجَمِيعَ مِنْ قَرِيبِهِمْ 'Hem awṣat al-`arab nisba wa dāra' This office will not be accepted for any group but this one, the Quraysh. They are the focal point of the Arabs in respect of their ancestry and residence.'² In making this pronouncement, he stressed that the Arabs would not accept a non-Qurayshī leader. He did not say, however, that it was impermissible and unlawful to appoint a non-Qurayshī leader. This is the viewpoint of Ibn Khaldūn; but some other scholars state that in the same gathering Abū Bakr Ḥaṣṣāb also repeated the statement of the Noble Prophet ﷺ that 'الائمة من القریش' ('The Imāms are from the Quraysh'), as Ibn Ḥajar related with regard to this Hadith with reference to the *Musnād* of Imam Aḥmad.³

Such, then, were the views held by various scholars. There is no doubt that the majority of jurists and theologians (*ahl al-kalām*) hold that it is necessary for the leader to belong to the Quraysh. But this condition

1 Ibn Khaldūn, *Muqaddimah*, in *Tārīkh Ibn Khaldūn* (Beirut: Dār al-Fikr, 1408/1988), p. 243; chapter 26.

2 al-Bukhārī, *Ṣaḥīḥ*, Hadith 6830.

3 *Fath al-Bārī*, vol. 12, p. 152.

applies only when there is among them a person who possesses the other characteristics required in a leader of the Muslim Community. If no such just and knowledgeable man is to be found among them, it is agreed that it will not then be permissible to appoint a Qurayshī as leader. This position is corroborated by Prophetic Tradition. The Messenger of Allah ﷺ said:

الأنة من القرىش ما عملوا بثلاث: اذا استرحموا رحموا واذا عاهدوا اوفروا واذا حكموا عدلا
 'The Imams are from the Quraysh, as long as they put [these] three things into practice: when they are asked for mercy they show mercy; when they make promises they keep them, and when they rule they are just.'¹

From this is learnt that when these traits are not found in them, then they are not eligible to rule. Here another issue arises, namely that often it is difficult to determine who is a Qurayshī and who not. And with regard to the non-Arabs, the jurists have stated that they have corrupted their ancestries in any case, and in such a situation it is also difficult to determine whether a person is Qurayshī, or not. Under such circumstances it should be unanimously permissible to appoint a non-Qurayshī leader.

Moreover, the condition of being a Qurayshī applies only to the Caliph. If the latter wishes to appoint a provincial or local governor, he may appoint a non-Qurayshī. This is reflected in the fact that Ibn Hajar ۃ applied the condition of being a Qurayshī only to the 'major Imamate', the highest position in government.²

The fifth condition: having knowledge

All the experts on Islamic politics are agreed that a leader must have knowledge. This raises a question: what should be the standard for this knowledge? Some jurists—for example, al-Māwardī in *al-Ahkām al-Sultāniyyah*—have suggested that an Amīr should himself be a *Mujtahid*. However, some latter-day scholars hold that this is not necessary and that he need only have the amount of knowledge necessary to enable him to govern in an Islamic manner.

1 al-Bazzār, *Kashf al-astār* (Beirut: Mu'assasah al-Risālah, 1399/1979), vol. 2, p. 228.

2 Ibn Hajar, *Fath al-Bārī*, vol. 3, p. 119.

The sixth condition: being just and righteous

The sixth condition is that of 'Adālah (being just and righteous). This means moulding one's life according to the precepts of Islam and avoids sins. Qādī Abū al-Ya'lā al-Farrā' ۃ said that a leader needs to have the qualities of knowledge and righteousness just as much as a *Qādī* does.¹

Many Muslim legal authorities are agreed that a *Qādī* must reach the level of *Ijtihād* as far as his knowledge is concerned, and that he must meet all the conditions of righteousness. 'Allāmah Ibn Taymiyyah ۃ discusses this at length at the beginning of his book *al-Siyāsah al-shar'iyyah*. He says that it is the person who is the most righteous who must be appointed as *Qādī* or as ruler, citing a Hadith related by Sayyidunā 'Abd Allāh ibn 'Abbās ۃ according to which the Noble Prophet ﷺ said: من استعمل رجلا من عصابة وفي تلک عصابة من هو ارضى لله فقد خان الله و خان رسوله و خان المؤمنين 'Whoever appoints a man from his clan, although there is someone in that clan who is more pleasing to Allah, has betrayed Allah, has betrayed His Messenger, and has betrayed the believers.'²

Imam Abū Hanifah ۃ held that in order to judge a witness's righteousness it suffices to judge his apparent righteousness: in other words, if he does not look like an evildoer he is to be considered righteous, and there is no need to actually investigate the matter. His two fellow-Imams (Sāhibayn) ۃ, however, hold that before accepting a witness's testimony one must examine him; and the Ḥanafī jurists have given their fatwa in accordance with this view.³

But as time passed and Muslim society degenerated, these conditions were relaxed to a certain degree. 'Righteous' came to be defined, less rigorously, as: من غلبت حسناته على سيئاته 'A person whose good qualities predominate over their bad qualities'.⁴

It has also been said that it is very difficult nowadays to find someone who fulfils completely the more classic condition of righteousness. For this reason, the following standard should be applied: ان العدل بالنسبة للقاضي، وبالنسبة للوالى هو الاصناف دون الغدر 'Uprightness in relation to a

1 Abū Ya'lā al-Farrā', *al-Ahkām al-Sultāniyyah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1421/2000), p. 20.

2 al-Ḥākim, *al-Mustadrak* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1990/1411); Hadith 7023.

3 Ibn al-Humām, *Fath al-Qadīr* (Quetta: Maktabah-i Rashīdiyyah, n.d.), vol. 6, pp. 457–58.

4 'Ali Ḥaydar, *Durar al-hukkām* (N.p.: Dār 'Ālam al-Kutub, 1423/2003), entry 1705.

Qādī is] that he base his verdicts on the truth, and in relation to a governor that he be impartial and without betrayal or deceit).¹

But if one thinks about it, there is no contradiction between these two. And here one needs to differentiate between two questions. Firstly, what are the duties of those people who elect a ruler or a *Qādī*? Secondly, what regulations apply when a person becomes a ruler or a *Qādī*? As far as the first issue is concerned, the duty of those who elect a *Qādī* or a ruler is the same as in the days of yore: to select the best person by exercising his best judgement, and not to prefer a less suitable person over a more suitable one, as has been stated in the Hadith in *al-Mustadrak* of al-Hākim. But if there be no such person, or if an evil person has been appointed as a ruler or *Qādī* by others, then that is an exceptional situation and one will have to put up with this *Qādī* or ruler. In *Fath al-Qadīr*, Imam Ghazālī is quoted as having said: اجمع هذه الشروط من الاجتهاد والعدالة وغيرهما متعدراً في نصرنا لخلو العصر من المجهود والعدل، فالوجه تنفيذ قضاء كل من ولاه السلطان ذو شوكة وان كان جاهلاً فاسقاً، وهو ظاهر المذهب عندنا فلو قلّ جاهلاً فاسقاً سخّ وبحكم بفتوى غيره ولكن 'The combination of *Ijtihād* and righteousness in one person is rare in our time, because this age is devoid of *Mujtahids* and righteous people. What happens now is that the decrees of any impressive-looking person to whom the ruler gives authority are implemented, even if he is ignorant and immoral. And this is the *zāhir* of our *madhab*. Hence, if the ruler appoints any ignorant evil-doer as *Qādī*, this appointment shall be proper and in order, and such a *Qādī* will have to act according to the fatwa of a second party (i.e. a *Mufti*). Still, it is not appropriate to appoint such a person as *Qādī*.²

THE SELECTION AND APPOINTMENT OF A LEADER

Islam requires that the appointment of a leader or ruler be based on mutual consultation, and of course, with due regard to the criteria discussed above. This principle has two parts. One is that it is *wājib* (obligatory) on the Muslims to appoint someone to rule over them; this is referred to in works on *fiqh* (jurisprudence) and *'aqā'id* (doctrine) as *Nasb al-imām*. The

¹ *Durar al-hukkām*, entry 1792.

² Ibn al-Hūmām, *Fath al-Qadīr*, vol. 6, p. 357; *Kitāb Adab al-Qādī*.

second is that such an appointment be made on the basis on mutual consultation. All the Imams of *fiqh* and *'aqā'id* are agreed that the appointment of a leader is obligatory upon the collectivity of Muslims to select as their Imam a person who fulfils the above-mentioned criteria. From this one may conclude that *Nasb al-Imām* is a *fard kifāyah* (collective obligation on the members of every group or community).

But here one needs to keep one point in mind. Only at times when the Muslims do not have a ruler, meaning that they spend their lives without governance, without a leader, does it become *wājib* on the Muslims to appoint one of their number as ruler. But if there is a ruler, even if he usurped his position of power, and he does not have the traits a ruler ought to have—and this does happen in some Muslim countries—what should the people do? This relates to the question of how an existing ruler can be removed from his post in the proper manner, which will be discussed later, *inshallah*.

The second part of the above-mentioned principle is that a ruler should be appointed after mutual consultation. It is not permissible that a person should usurp power and impose himself on the people, or that a handful of people appoint anyone as Caliph without first fully consulting a body of individuals with the necessary political insight. The process of appointment, *nasb al-khalīfah*, must be based on mutual consultation. This argument is derived from the following *Āyah*:

وَأَمْرُهُمْ شُورَى بَيْنَهُمْ

And their matters are decided through mutual consultation. (42:38)

Apart from that, the strongest proof that *Khilāfah* is to be decided through mutual consultation among the common Muslims is that the Messenger of Allah ﷺ did not himself nominate anyone to be Caliph. If the common Muslims had not been supposed to make their selection, he certainly would not have departed from this world without naming anyone as his successor.

Still clearer proof is a Tradition related by al-Bukhārī, according to which the Messenger of Allah ﷺ said to Sayyidatunā 'Ā'ishah رضي الله عنها: لقد هممتُ او اردتُ ان ارسل الى ابى بكر وابنه اعهد ان يقول القائلون او يتمنى المتممنون ثم قلت يابى الله ويدفع المؤمنون 'I had made up my mind (or, I had intended) to send [a message] to Abū Bakr and his son [appointing Abū Bakr as Caliph] lest some

people should start talking [about] and other wish [for it for themselves]; but then I said [to myself] that Allah would not allow [anybody else to become Caliph], and the believers would repudiate [anybody else].¹

From this Tradition it is clear both that the Prophet ﷺ left it to the Muslims to elect a ruler for themselves, and that he was certain that that Muslims would not accept anyone else but Abū Bakr Ṣiddīq. Hence he did not deem it necessary to appoint anyone.

The *Ṣaḥīḥ* of al-Bukhārī contains another detailed Tradition on the authority of Sayyidunā ‘Abd al-Rahmān ibn ‘Awf which highlights the importance of mutual consultation when electing a Caliph. The gist of this Hadith is that Sayyidunā ‘Abd al-Rahmān ibn ‘Awf on the occasion of Sayyidunā ‘Umar’s last Hajj, overheard some people saying that the decision to swear allegiance to Sayyidunā Abū Bakr had been made in haste, and so when Sayyidunā ‘Umar dies, they should hurry to pledge allegiance to anyone they pleased, so that he becomes Caliph just as Sayyidunā Abū Bakr became Caliph. Sayyidunā ‘Abd al-Rahmān ibn ‘Awf informed Sayyidunā ‘Umar about what these people were saying.

When Sayyidunā ‘Umar heard about this, he was concerned and he decided to give a Khutba during Hajj, in order to remove this misunderstanding. However, Sayyidunā ‘Abd al-Rahmān ibn ‘Awf advised him that all kinds of people came to perform Hajj, and that if a speech were given on such an occasion many people might not understand it in the intended sense, and might attribute their own misinterpretations to Sayyidunā ‘Umar. Hence, it would be better to clarify this point after returning to Madinah, because that was the home of high-ranking *Muhājirūn* and *Anṣār* who would understand properly the meaning of what is being said and would draw the correct conclusion.

Sayyidunā ‘Umar thought this advice to be suitable, and so after returning to al-Madīnah al-Munawwarah he gave the famous speech which is recorded in the *Ṣaḥīḥ* of al-Bukhārī. The importance of this can be judged from the fact that on the Friday, Sayyidunā ‘Abd al-Rahmān ibn ‘Awf was already waiting for Sayyidunā ‘Umar, for he knew that an important issue would be addressed that day. This is why he said to Sayyidunā Sa‘id ibn Zayd, who was sitting next to him, ‘Today an important issue will

be discussed.’ Sayyidunā ‘Umar then delivered his speech, in which he made many important statements including the following:

بلغني ان قائلا منكم يقول والله لو مات عمر بايعت فلانا، فلا يغترن امرؤ ان يقول
انما كان بيعة ابي بكر فلترة وتمت، الا وانها كانت كذلك ولكن الله وقى شرها
وليس منكم من يقطع الاعناق اليه مثل ابي بكر، من بايع رجلا عن غير مشورة
من المسلمين فلا يتبع هو ولا الذي تابعه تغرة ان يقتلا، وانه كان من خيرنا حين
توفى الله نبيه.

‘It has reached me that one of you has said: By Allah, if ‘Umar dies, I shall pledge allegiance to So-and-So. Nobody should be deceived into saying that the pledge to Abū Bakr took place suddenly and that was all. It is true that this pledge did take place in that manner [i.e. those present pledged allegiance without full consultation], but Allah warded off the evil from it, because amongst you there was no one to whom people looked up as they looked up to Abū Bakr. If any person pledges allegiance to another without consulting the Muslims, neither he to whom allegiance was been pledged nor he who pledged it are to be followed, for there is apprehension that both of them may be killed. And [Abū Bakr] was among the best of us when Allah summoned His Prophet.’¹

After that, Sayyidunā ‘Umar recounted the whole incident of the gathering of Banī Sa‘idah: how they got to know that the *Anṣār* had gathered to elect a Caliph, how Sayyidunā Abū Bakr al-Ṣiddīq arrived; and how there was apprehension that if the *Anṣār* appointed someone as their Caliph there might be confusion among the Muslims; and how, since it was almost certain that the whole *Ummah* would agree on Sayyidunā Abū Bakr because he was the best of them, they stretched out their hands and pledged allegiance to him. And after relating this incident, Sayyidunā ‘Umar repeated his statement:

من بايع رجلا عن غير مشورة من المسلمين فلا يتبع هو ولا الذي تابعه تغرة ان يقتلا

‘When a person pledges allegiance to another without consulting the Muslims on this matter, then neither the one to whom allegiance had been

¹ Bukhārī, *Ṣaḥīḥ*, Hadith 5666.

¹ Bukhārī, *Ṣaḥīḥ*, Hadith 6830.

pledged is to be followed, nor the one who pledged allegiance, because there is apprehension that both of them might be killed.'

According to a Tradition, Sayyidunā Abū Hurayrah ﷺ is reported to have related the following from Sayyidunā 'Umar ﷺ:

من انتزع امور المسلمين من غير مشورة فلا بيعة له

'If a person pre-empted the concerns of the Muslims without due consultation, allegiance to him is null and void.'

All these arguments are given to show that one needs to take the advice of a *Shūrā* or council before electing a Caliph. Now, what does this *Shūrā* mean? Does it mean casting votes in a particular circle in order to obtain a majority? The Holy Qur'ān and the Sunnah have not prescribed any particular procedure. It has been left to the Muslims of each era to decide the details for themselves. In general, however, our scholars are of the opinion that *Shūrā* does not mean that every adult, regardless of his capabilities, is to cast their vote to elect a leader. According to them, *Shūrā* means that the *Ahl al-Hall wa al-'Aqd* (people well-versed in religious knowledge and political affairs) are to decide, this being a technical term in Islamic law and politics. This principle dates from the days of the Righteous Caliphs, when only *Ahl al-Hall wa al-'Aqd* were involved in deciding who should be the next Caliph. For example, in the case of the appointment of Sayyidunā Abū Bakr Ṣiddīq ﷺ not everyone was consulted. A group of *Muhājirūn* and *Anṣār* who happened to be present took the decision together. Then Sayyidunā 'Umar ﷺ formed a committee of six Companions and authorised them to appoint the next Caliph: in this case, Sayyidunā 'Uthmān. Then, after Sayyidunā 'Uthmān's ﷺ martyrdom, the people went to Sayyidunā 'Alī ﷺ and stretched out their hands to pledge allegiance to him. Upon this, Sayyidunā 'Alī said:

لِيْس ذلِكُ الْيَكْمُ اَنْمَا هُوَ اَهْلُ الشُّورِيَّ وَاهْلُ بَدْرٍ فَمَنْ رَضِيَ بِهِ اَهْلُ الشُّورِيَّ فَهُوَ
الْخَلِيفَةُ فَنَجْتَمِعُ وَنَنْتَظِرُ فِي هَذَا الْامْرِ.

'That is not for you [to decide], but for the advisory council and the war-

¹ Ibn Abī Shaybah, *al-Muṣannaf*, ed. 'Awwāmah (N.p.: Mu'assasah 'Ulūm al-Qur'ān, 1427/2006), vol. 12, p. 307; *Mā qālū fī al-furūd wa tadwīn al-dawāwīn*.

riors of Badr. So whoever the advisory council approves shall be Caliph. We shall assemble and consider the matter.'¹

In al-Ṭabarānī it is recorded through 'Umar ibn Shubh that when the Companions were about to pledge allegiance to Sayyidunā 'Alī ﷺ saying that Sayyidunā 'Uthmān ﷺ had been martyred, that allegiance must be pledged to anyone, and that there was no one better than him, owing to his steadfastness in Islam and his close relationship to the Holy Prophet ﷺ, Sayyidunā 'Alī ﷺ replied:

لَا تَفْعَلُو فَإِنِّي أَنَا كَوْنُ وَزِيرٌ خَيْرٌ أَنْ أَكُونَ امِيرًا.

'Do not do so, for it is better for me to be an adviser than to be leader.'

Then, when the people insisted, he said: 'Very well, then, let us go to the mosque:

فَإِنْ يَبْعِثُكُمْ لَا تَكُونُ خَفِيَاً وَلَا تَكُونُ إِلَّا عَنْ رَضَا الْمُسْلِمِينَ.

'For allegiance to me must not be secret, or given without the approval of the Muslims.'

Sayyidunā 'Abd Allāh ibn 'Abbās ﷺ said, 'I did not want him to go to the mosque to take the pledge of allegiance, lest the people make noise. However, Sayyidunā 'Alī ﷺ did not agree. He went to the mosque.

فَلَمَّا دَخَلَ دَخْلَ الْمَهَاجِرُونَ وَالْأَنْصَارَ فَبَأْيَعُوهُ، ثُمَّ بَأْيَعُوهُ النَّاسُ.

'Then when he entered the mosque the *Muhājirūn* and *Anṣār* also entered and pledged allegiance to him, and then the people also pledged allegiance to him.'²

Sayyidunā 'Alī ﷺ also did not take the view of the masses into consideration. He instructed that an advisory council be called, comprising people with religious understanding and those who had fought at the Battle of Badr. On this basis, those learned in Islamic political theory hold that the election of a new Caliph is to be left up to the *Ahl al-Hall wa al-'Aqd*.

Ahl al-Hall wa al-'Aqd refers to those whom the populace at large consider their guides. Back in those days, the *Ahl al-Hall wa al-'Aqd* also

¹ Ibn Qutaybah, *al-Imāmah wa al-siyāsah* (Cairo, 1388/1969), vol. 1, p. 46.

² al-Ṭabarānī, *Tārīkh*, vol. 2, p. 427.

included tribal leaders, scholars, jurists, leaders of different circles. This expression was not vague or ambiguous, and there was no difference of opinion as to its meaning. Society at large knew very well who belonged to this category, and so there was no need for any special identification. People in general recognised them and considered that anyone whose advice was not taken was not to be considered as representative of the advisory council.

In general a new Caliph was elected as follows. The *Ahl al-Hall wa al-'Aqd* would pledge allegiance to him, saying something like:

بِأَيْمَانِكَ رَاضِينَ عَلَى إِقَامَةِ الْعَدْلِ وَالْقِيَامِ بِفِرَوْضِ الْإِمَامَةِ عَلَى كِتَابِ اللَّهِ وَسُنْنَةِ رَسُولِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.

'We gladly pledge allegiance to you, on the basis that you shall act justly and discharge the duties of leadership according to the Book of Allah and the Sunnah of His Messenger, may Allah bless him and grant him peace.'

It is not necessary to join hands when pledging allegiance. It is sufficient to pledge allegiance verbally.

In later ages, however, the concept of *Ahl al-Hall wa al-'Aqd* did not retain this form, and it was no longer beyond dispute. Nowadays the Muslims would have to adopt a system to identify them. What system could be adopted in this age? The answer is that the advisory council, parliament, or assembly (to be discussed later) could be taken as constituting *Ahl al-Hall wa al-'Aqd*. Such a body, whether national or provincial, can be elected on a majority basis. This too will be discussed below, *inshallah*, along with other matters relating to the *Shūrā* (advisory council). In addition, it appears that the Holy *Shari'ah* has left scope for the ruler to be elected directly and on a majority basis, since there is no text that expressly forbids doing so.

This is a method of appointing a ruler which is unanimously accepted as valid. There are two more methods, both of which are also considered valid; one is called *Istikhlāf* and the other *Istilā* or *Taghallub*. These two methods will now be briefly discussed.

3. *ISTIKHLĀF*

Istikhlāf means that a person who has been appointed as legal ruler nominates his successor during his lifetime. The latter can also be called *Wāli al-'ahd*, which is usually translated as 'crown prince' or 'heir apparent'). The term *Wāli al-'ahd* is most often used in relation to monarchic rule, but its meaning can be extended to cover that of *Istikhlāf*, too.

Sayyidunā Abū Bakr رض thus nominated Sayyidunā 'Umar رض shortly before his death. In other words, he nominated him as the next Caliph. As we have already seen, 'Umar himself said: 'I would have nominated Abū 'Ubaydah ibn al-Jarrāh as the next Caliph had he been alive today.' From this we learn that *Istikhlāf* is permissible. However, three points must be kept in mind in this connection.

In the first place, *Istikhlāf* is not to be a hereditary matter, for when Sayyidunā Ibrāhīm رض prayed to Allah to grant his offspring leadership, Allah Most High replied to him:

لَا يَنَالُ عَهْدِ الظَّالِمِينَ

My covenant does not extend to wrongdoers. (2:124)

And when Sayyidunā Abū Bakr رض appointed his successor, he declared: 'I have not appointed any of my relatives.'¹ There is consensus among all Sunnī Muslims on this matter. 'Allāmah Ibn Hazm رض said:

وَلَا خَلَفَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّهُ لَا يَجُوزُ التَّوَارِثُ فِيهَا.

'There is no dispute between any Muslims on this point: that it is impermissible for the caliphate to be made hereditary.'²

Secondly, if the Caliph desires to nominate his successor, it is legally *Wājib* upon him to have due regard for the conditions of the caliphate. He must select the best available person, and this selection should take place after consulting people of sound opinion, as was done by Sayyidunā Abū Bakr al-Šiddīq رض. If a Caliph, in such circumstances, appoints any of his relatives, this will be due both to their mutual relationship but to the qualities of the nominee. It is nevertheless better to avoid this, so as not to give others a

¹ al-Tabārī, *Tārīkh*, vol. 2, p. 352.

² Ibn Hazm, *Faṣl fī al-milal wa al-ahwā' wa al-nihāl*, vol. 5, p. 12.

1 Ibn Jamā'ah, *Taḥrīr al-ahkām fī tadbīr ahl al-Islām*, p. 57.

reason for calumny. We have already seen how Sayyidunā Abū Bakr and Sayyidunā ‘Umar رض were careful to observe this principle. According to one account, Sayyidunā ‘Umar even said to the person who had suggested that he appoint his son as his successor, ‘ما اردت الله بهذا’ (‘You had no intention of pleasing Allah with this’).¹

Sayyidunā ‘Uthmān رض was martyred and so he had no opportunity to nominate his successor. Sayyidunā ‘Alī رض was advised to nominate his son Sayyidunā Ḥasan رض as his successor. When people asked whether they should pledge allegiance to Ḥasan, Sayyidunā ‘Alī replied: ‘لا امركم ولا انهاكم، انتم ابصر’ (‘I neither command you nor forbid you to do so. Your view is the best.’) He also said: I shall leave you, just as the Noble Prophet صلی اللہ علیہ وسَلَّمَ left us.²

In other words, none of the rightly guided Caliphs, may Allah be pleased with them all, nominated their sons or any other relatives to succeed them. Sayyidunā Mu‘āwiyah رض was the first to appoint his son Yazid as crown prince. Here it should be kept in mind that he did so considering this the most beneficial solution for the *Ummah*; he had no evil intentions in doing so. Ibn Khaldūn writes:

و كذلك عهد معوية الى يزيد خوفا من افتراق الكلمة بـ، ا كانت بنو امية لم يرضوا
تسليم الامر الى سواهم، فلو قد عهد الى غيره اختلفوا عليه مع ان ظنهم كان بما
صالحا ولا يرتاب احد في ذلك ولا يظن بمعاوية غيره فلم يكن ليعهد اليه وهو
يعتقد ما كان عليه من الفسق حاشا لله لمعاوية من ذلك

‘Mu‘āwiyah likewise named Yazid as his successor, fearing lest differences should arise among the Muslims. For Banū Umayyah was not willing to surrender this matter to anyone but themselves, and had he nominated anyone else they would have disagreed. Apart from that, he considered Yazid suitable (or righteous: *ṣāliḥ*), and no one should doubt that [to have been his view]. One cannot think otherwise about Sayyidunā Mu‘āwiyah; had he believed his son to be a miscreant, far be it from Mu‘āwiyah to have nominated him.’

1 Ibn Sa‘d, *Tabaqāt*, vol. 3, p. 318.

2 Ahmad, *Musnād*, vol. 2, Hadith 1087; *Majma‘ al-zawā’id*, vol. 9, p. 138; also related by al-Bazzār with a chain described as *hasan*.

Ibn Khaldūn’s point is strengthened by the fact that Sayyidunā Mu‘āwiyah رض made the following *du‘ā* (supplication) during a *Khuṭba* (sermon):

اللهم ان كنت تعلم اني وليته لانه فيما اراه اهل لذلك فاتتم له ما وليته وان كنت
وليته لاني احبه فلا تتم له ما وليته

‘O Allah, if You know that I have appointed him because I truly think him to be worthy of it, then fulfil this appointment for him. But if I have appointed him merely because I love him, do not fulfil this appointment for him.’

Ḥāfiẓ Shams al-Dīn al-Dhahabī and ‘Allāmah Jalāl al-Dīn al-Suyūtī رض recorded this *Du‘ā* on the authority of ‘Aṭiyyah ibn Qays:

اللهم ان كنت عهدت ليزيد لما رأيتك من فضله فبلغه ما املت واعنه وان كنت انا
حملني حب الوالد لولده وانه ليس لما صنعت به اهلا فاقبضه قبل ان يبلغ ذلك

‘O Allah, if I have appointed Yazid as my successor because of the merit I have perceived in him, then let him attain what I have hoped for him, and aid him. But if I was induced to do so only by the love that a father has for his son that made me do so, and he is unworthy of what I did for him, then take his soul before he can attain that [office].’²

But the fact is that this step has proven detrimental to the *Ummah*. It became a much- misused example that caused the caliphate to become hereditary. There were some breaks in between, but for centuries to follow, the Caliph was appointed in this manner, by birth, and it proved impossible to return to the exemplary method of electing a Caliph that had been laid down by the Rightly-Guided Caliphs. I have discussed this issue in my book, *Sayyidunā Mu‘āwiyah awr tārīkhī haqā’iq* (‘Sayyidunā Mu‘āwiya and historical facts’, in Urdu).

The third point is a question. ‘What is the status of *Istikhlāf*? Is it binding on the people afterwards, or not?’ Experts on Islamic politics hold different opinions in this regard. Some hold that an *Istikhlāf* done by a rightful Caliph is binding on the people, because any orders that he gives during his lifetime

1 Ibn Khaldūn, *Muqaddimah*, Book 1, chapter 3, section 28, p. 257.

2 al-Dhahabī, *Tārīkh al-Islām* (N.p.: Dār al-Kitāb al-Arabi, 1993/1413), vol. 2, p. 268; al-Suyūtī, *Tārīkh al-khulafā’* (Karachi, 1378/1959), p. 157.

are valid and must be obeyed; if he decides that a specific individual is to be the Caliph after him, that decision must be acted upon. Other experts hold that *Istikhlāf* is not binding but is merely a recommendation or suggestion whereby the ruling Caliph advises that a particular individual be appointed as his successor. Whether this proposal is to be accepted or rejected should be decided by the *Ahl al-Hall wa al-'Aqd* of the *Ummah*. Qādī Abū Ya'la adopted this stance in his book *al-Aḥkām al-sultāniyyah*, where he says:

ان امامۃ المعہود الیہ تنعقد بعد موته باختیار اہل الوقت

'The Imamate of the appointed successor becomes valid after the death of [the ruler], and by choice of the *Ahl al-Hall wa al-'Aqd*'.¹

'Allāmah Ibn Taymiyyah رحمه اللہ explained this position further:

و كذلك عمر لما عهد اليه ابو بکر انما صار اماما لما بايعوه و اطاعوه ولو قدر انهم

لم ينفذوا عهده ابی بکر ولم يبايعوه لم يصر اماما

'Likewise, when Abū Bakr designated 'Umar, he became Imam only when [the people] pledged allegiance and showed obedience to him. Had it turned out that they did not act upon Abū Bakr's will by pledging allegiance to him, he would not have become Imam'.²

This stance is further corroborated by the fact that when Sayyidunā Abū Bakr رض recommended Sayyidunā 'Umar رض as his successor, he was not relying on his own opinion alone. As is related in al-Ṭabarī's *History*, he had consulted Sayyidunā 'Abd al-Rahmān ibn 'Awf and Sayyidunā 'Uthmān رض. When they both voiced a similar opinion, he called together all the other *Ahl al-Hall wa al-'Aqd* and put his proposal before them, stating that he intended to appoint Sayyidunā 'Umar رض as his successor. On hearing this, all those present said: 'سمعوا واطعنا' ('We hear and obey').³

Similarly, Sayyidunā Abū Bakr al-Ṣiddīq رض did not rely exclusively on his own opinion. He assembled the *Ahl al-Hall wa al-'Aqd* of his time and presented his view to them before implementing it. Even if one were to consider the appointments of Sayyidunā Abū Bakr and Sayyidunā 'Umar رض as binding, nobody in this age could claim to be their peer in any

1 Abū Ya'la, *al-Aḥkām al-sultāniyyah*, p. 26.

2 Ibn Taymiyyah, *Minhāj al-Sunnah*, vol. 1, p. 530.

3 al-Ṭabarī, *Tārikh*, vol. 2, p. 352-3.

respect. The mere thought of such a claim is impossible. Hence, the correct viewpoint is that *Istikhlāf* is actually a kind of suggestion that is subject to acceptance or rejection on the part of *Ahl al-Hall wa al-'Aqd*. Some have argued that if the Caliph responsible for the *Istikhlāf* was a rightful ruler, his orders ought to be obeyed after his death as well as during his lifetime. The answer to this is that when a Caliph dies his caliphate comes to an end, and so it is no longer obligatory to obey his orders. 'Allāmah Ibn 'Ābidīn رحمه اللہ, who dedicated a whole section of his treatise *Radd al-muhtar* to this question, writes:

يُوْجَدُ مِنْ قَوْلِ شَرْحِ الْمِيَةِ أَنَّ اْمْرَ الْخَلِيفَةِ لَا يَقْيَّ بَعْدَ مَوْتِهِ أَوْ عَزْلِهِ كَمَا صَرَّحَ فِي
الْفَتاوَىِ الْخَيْرِيَّةِ وَبَنِيَ عَلَيْهِ أَنَّهُ لَوْ نَهَىَ عَنْ سَمَاعِ الدُّعْوَىِ بَعْدَ خَمْسِ عَشَرَ سَنَةً لَا
يَقْيَّ نَهْيَهُ بَعْدَ مَوْتِهِ

'From a statement in *Sharh al-Munyah* one may conclude that an order from a Caliph does not remain in force after his death or dismissal, as is clearly stated in *al-Fatāwā al-Khayriyyah*. Consequently, if the Caliph prohibits the hearing of a lawsuit after fifteen years [have elapsed], that prohibition is lifted with his death'.¹

4. *ISTĪLĀ*, I.E. FORCING ONE'S WAY TO POWER

The third way through which a person may become leader is called *Istīlā* or *Tagħallub*, meaning that he comes to power by force. The legal ruling regarding such a person is as follows. If he seizes power from a rightful ruler by rebelling against him, he is considered a miscreant. Unless or until he has completely taken over power, he is considered as a rebel, and it is obligatory (*Wājib*) to employ all possible means to stop him. For the Holy Qur'ān tells us:

فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَرْكِيَّةً إِلَىٰ أَمْرِ اللَّهِ

Then if one party transgresses against the other, fight the transgressing one until it returns to [obeying] the ordinance of Allah. (49:9)

1 Ibn 'Ābidīn, *Radd al-muhtar*, vol. 2, p. 172; *Bāb al-'Idayn, maṭlab Amr al-khalifah lā yabqā ba'd mawtih*.

If such a rebel assumes complete power he is guilty of an enormous sin, because the Holy Qur'an and the Sacred Hadiths have pronounced severe warnings against rebellion. The Messenger of Allah ﷺ cursed six kinds of people, one of them being:

السلط بالجبروت ليعز بذلك من اذل الله ويذل من اعز الله

'A usurper by force, so that he may thereby honour one whom Allah has abased, and abase one whom Allah has honoured.'¹

The jurists have stated, however, that once a rebel has completely seized power his rule stands established; the ordinances that he issues have the same status as those of a rightful Caliph. On the one hand, then, the mainstream scholars say that a rebel who forces his way to power is liable to be removed, if it is possible to do so in a peaceful manner (the details concerning removal will be discussed later, *inshallah*). On the other hand, they state that any orders he gives that are not in opposition to the Holy Law must be implemented. The proof for this is the previously cited Hadith according to which the Messenger of Allah ﷺ said:

سَمِعُوا وَاطِّيعُوا إِلَوَ اسْتَعْمِلُ عَلَيْكُمْ عَبْدٌ حَبْشَيٌّ كَانَ رَاسَهُ زَبَبَةً

'Hear and obey, even if an Abyssinian slave with a head like a raisin be put in charge of you.'²

And there is much wisdom in this regulation. If any orders of his that are not contrary to the Holy Shari'ah were not binding, it would lead to full-scale lawlessness and anarchy. Even in today's world, it is agreed that there are two kinds of rulers: rulers as per constitution, as per law—they are known as *de jure*, i.e. rulers on the basis of law, and *de facto* rulers who contrived their position in government on the basis of 'facts on the ground', and not necessarily by legal means. This agreement on the subject means that even though such a person may have usurped their way to power, although he is not in the constitutional sense a ruler, his orders are to be considered as valid and as binding. Any other course of action would result in mayhem. If his orders were not considered valid, any person whom such a ruler ap-

pointed as a judge would not be a rightful one; hence, the verdicts given by such a judge would not be valid either. They would be void *ab initio*, from the outset. This example should suffice to illustrate what kind of situation would evolve in every way of life.

This is why the scholars have stated that Imamate shall be established, even if it has been usurped. A person who forces his way into power shall be a sinner nevertheless, and one ought to try to remove him in a peaceful manner; but still, as long as he is in power, such of his orders as do not contravene the Holy Law shall be considered as valid and bound to be implemented.

5. CAN THERE BE MORE THAN ONE CALIPH?

The majority of scholars hold that there ought to be just one Caliph worldwide, that there cannot be different ones in different countries. Al-Māwardī رض wrote:

اذا عقدت الامامة لامامين في بلدين لم تتعقد امامتهما لانه لا يجوز ان يكون لlama
امامان في وقت واحد وان شذ قوم فجوازه

'If two different persons are appointed as Caliph in two different places, their Imamate shall not be valid, since it is not permissible that there should be two Imams at the same time, even though some have adopted the unorthodox view that this is permissible.'³

Apart from some other proofs, an argument is drawn from the Hadith in which the Messenger of Allah ﷺ is reported to have said:

سيكون خلفاء فيكثرون، قالوا فما تأمرنا يا رسول الله؟ قال فوابيعة الاول

'There shall be Caliphs, and there shall be many of them. [The Companions] asked: 'So what are your orders [for those times], o Messenger of Allah?' He replied: 'Remain loyal to the first one to whom you pledged allegiance first, and then to the next.'⁴

1 al-Tirmidhī, *al-Jāmi'*, *Kitāb al-Faqr*, *Bāb* 17, Hadith 2154.

2 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Ṣalāh*, *Bāb Imāmat al-‘abd*, Hadith 693; *Bāb al-Sama'* wa al-ṭā‘a, Hadith 7142.

1 al-Māwardī, *al-Āhkām al-sultāniyyah*, p. 9; *Bāb al-Uṣūl*.

2 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Anbiyā'*; *Bāb Mā dhukira ‘an Banī Isrā’il*, Hadith 3455.

In this Hadith, the Messenger of Allah ﷺ stated that only one pledge of allegiance to one Caliph shall be binding, and hence there cannot be two Caliphs at the same time.

However, as al-Māwardī رحمه الله pointed out, some scholars hold that if the Islamic Empire extends over so vast an area that it would be highly impracticable to unite all its subjects under one leader, one may divide it into regions and appoint one Caliph to rule over each such territory. 'Allāmah 'Abd al-Qādir al-Baghdādī رحمه الله says:

لا يجوز ان يكون في الوقت الواحد مامان، واجبا الطاعة، الا ان يكون بين البلدين
بحرمانع من وصول نصرة اهل كل واحد منهما الى الآخر فيجوز حينئذ لاهل كل
واحد منهما عقد الامامة لواحد من اهل ناحية

'It is not permissible that there be two Imams at the same time who must be obeyed... unless there be between two areas a sea such as would prevent the people of one from helping the people of another. In that case, it is permissible for the people of each area to appoint their own leader.'¹

'Allāmah al-Māwardī رحمه الله says:

فاما في بلدان شتى وامصار متباينة فقد ذهبت طائفة شاذة الى جواز ذلك لأن
الامام مندوب للمصالحة اذا كانا اثنين في بلدين او ناحتين كان كل واحد منهما
اقوم بما في يديه واضبط لما يليه ولانه لما جاز بعثة نبیین في عصر واحد ولم يؤدّ
ذلك الى ابطال النبوة كانت الامامة اولی ولا يؤدّي ذلك الى ابطال الامامة.

'In disparate lands and farflung cities, some scholars hold firmly that it is permissible [to appoint more than one Imam, since the purpose of appointing an Imam is to achieve certain benefits. If there are two Imams in two different regions, each will be in a better position to look after his region and to control the area closest to him. Similarly, as it was possible for two Prophets to be sent in a single era, and the commission of one did not render the other's Prophethood void, then in the case of Imamate it must hold even more true that this does not entail the invalidation of the Imamate.'²

1 'Abd al-Qādir al-Baghdādī, *Uṣūl al-dīn*, p. 274.

2 al-Māwardī, *Adab al-dunyā wa al-dīn* (N.p.: Dār Maktabah al-Hayāt, 1986), p. 136.

Imām al-Haramayn al-Juwainī رحمه الله expressed the same view in these terms:

و الذي عندي فيه ان عقد الامامة لشخص في صقع واحد متضائق الخطط
والمخالف غير جائز وقد حصل الاجماع عليه واما اذا بعد المדי وتخلل بين
الامامين شسوع النبوي فللاحتمال في ذلك مجال وهو خارج عن القواطع.

'My position on this matter is that I am convinced that it is not permissible to appoint two Imams over a small area of territory, and there is a consensus in this regard. But if the area is far-flung and there is a substantial distance between the Imams, there is scope to accept such an arrangement, that situation falls outside the [normal] restrictions.'¹

Imam Qurṭubī corroborates this view in his *Tafsīr*, where he quotes the passage from 'Allāmah Juwaynī verbatim and in full.²

In spite of these statements, the majority of scholars hold that there cannot be several Imams at a time. If one reflects carefully on the matter, one comes to the conclusion that Islam is a worldwide mission, and that the fact that the Muslims were 'put all on one string', i.e. made to follow the same injunctions and the same way of life, requires that they all have a single leader, as most of the learned believe. And as far as distances are concerned, one should remember that during the Righteous Caliphate Islam had covered one third of the then known world, and soon afterwards it covered half of it. Yet everything was administered by one Imam. And now, in this modern age, with all the progress that has been made in telecommunications, distance is rarely an issue any more. This is why an ideal Islamic state should work towards the goal of there being only one Imam in charge worldwide. But in present circumstances, with the Islamic world divided into scores of independently governed countries, one would have first to persuade their leaders to accept any such proposal. Otherwise, this end could not be achieved without war between the Muslim nations—which would indeed be a greater evil. These circumstances leave one no choice but to accept the multitude of governments, for anything else would lead to chaos³. In the past, too, there were numerous governments,

1 al-Juwainī, *al-Irshād ilā qawāṭī' al-adilla fī uṣūl al-i'tiqād* (Beirut, 1405/1985), p. 357.

2 al-Qurṭubī, *Tafsīr* (Cairo: Dār al-Kutub al-Miṣriyyah, 1384/1964), vol. 1, p. 273; *Sūrat al-Baqarah*, Āyah 30.

3 In this context various questions arise, such as the following. Should Muslims participate

and the scholars considered their ordinances as binding. Hence one may act according to the second statement and consider the orders given by various governments as valid and binding, for at present there is no other choice. And verily Allah ﷺ knows best.

CHAPTER FOUR

THE PRINCIPLES OF RUNNING
A GOVERNMENT

Once a government has been formed according to the principles laid down in the last chapter, there need to be some regulations for the person in charge of the government, too. After all, he is not meant to be an absolute monarch. This chapter will explain the principles by which the leader of the government is to abide.

1. FOLLOWING THE HOLY QUR'ĀN AND THE SUNNAH

The first and foremost principle is that the ruler must align all his orders and decisions to the requirements of the Holy Qur'ān, the Sunnah, and the consensus of the Muslim *Ummah*. He must not pass any law or give any orders that go against the clear injunctions of the Qur'ān and Sunnah; this is the logical and necessary consequence of the principle that ultimate Sovereignty belongs to Allah ﷺ alone, and that man is merely His representative on Earth. Hence it is entirely natural that man not be permitted to make any laws that violate the Divine Commandments that have been revealed in the Holy Qur'ān or conveyed by the Noble Prophet ﷺ in person. If a leader persists in issuing a law that contravenes them, such a law can be legally challenged.

2. CONSULTING THE ADVISORY COUNCIL

Seeking the opinion of an advisory council is not only necessary when appointing a new Caliph, but also afterwards. Once he has been appointed, it

in international organisations such as the OIC (Organisation of Islamic Conference), despite their limitations, with the intention of working towards Muslim unity on some level and in the hope of achieving genuine reform (*islāh*) and betterment? What should be their position regarding regional conflicts and power struggles between Muslim-majority nations? If the above-mentioned institutions are found to be ineffectual or Islamically unacceptable, should Muslims opt out of such regional groupings? Should they instead (or as well) look to some kind of federal structures within their nation-states, in keeping with the moves towards devolution seen today in (for example) Scotland, Wales, and Northern Ireland? Are today's nation-states simply too large to work and to reflect their people's values, interests and aspirations? Would devolution pander to xenophobic interests (witness recent developments in Central and Eastern Europe, and the British vote to leave the European Union), and hence further endanger the well-being and interests of Muslim minorities?

is incumbent upon the Caliph to act on the principles of *Shūrā* or mutual consultation, that being the basis of his government. The jurists even say that if a leader does not consult his advisory council in governmental affairs, he deserves to be ousted. The Holy Qur'an tells us:

وَشَارِعُهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ

Seek their counsel on the matter. And when you make a resolve, put your reliance upon Allah. (3:159)

It should be kept in mind that this order was addressed to the Noble Prophet ﷺ. Even he was commanded to consult other Muslims—he, who was innocent of sin and who was the recipient of Divine Revelation! The purpose of this injunction is to indicate those rulers who came after the Noble Prophet ﷺ the immense importance of seeking advice; to show them that if the Noble Prophet ﷺ was given this injunction, they are even more in need of it. It was the Noble Prophet's ﷺ blessed habit to seek his Companions' opinion in all matters of importance. Sayyidunā Abū Hurayrah رضى الله عنه narrated:

مَا رأيْتُ أَحَدَكُمْ قَطُّ أَكْثَرَ مَشُورَةً لِأَصْحَابِهِ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

'I have not seen any of you consult his Companions more often than the Messenger of Allah ﷺ.'¹

Ḩāfiẓ Ibn Kathīr رضي الله عنه, in his commentary on the above ayah, cites many occasions on which the Messenger of Allah ﷺ sought his Companions' opinion. This included attacking Abū Jahl's army during the Battle of Badr, ransoming the captives taken in that battle, whether to fight the enemy outside Madīnah during the Battle of Uhud, digging the trench before the Battle of the Trench, and discussing how to deal with the situation when Sayyidah 'Ā'ishah رضي الله عنها was slandered by the Hypocrites. These are just a few examples. Ḥāfiẓ Ibn Kathīr رضي الله عنه cites in this connection a Tradition related by Sayyidunā 'Abd al-Rahmān ibn Ghanam رضي الله عنه according to which the Messenger of Allah ﷺ said to Sayyidunā Abū Bakr and Sayyidunā 'Umar رضي الله عنهما:

لَوْجَمْتُمَا فِي مَشُورَةٍ مَا خَالَفْتُكُمْ

¹ Ahmad ibn Hanbal, *Musnad*, *Mu'assasah al-risālah*; *Musnad al-Kūfiyyīn*, Hadith 1892; related by al-Miswar ibn Makhrimah and Marwān ibn al-Hakam.

'If you two agree during consultation [i.e. share the same opinion], I shall not oppose you.'

'Allāmah Haythamī رضي الله عنه stated, in analysing the chain of this Tradition:

رَوَاهُ أَحْمَدُ وَرَجَالُهُ ثَقَاتٌ إِلَّا إِنَّ أَبْنَى بْنَ حَنْبَلٍ لَمْ يَسْمَعْ مِنَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

'It was narrated by Ahmad [ibn Hanbal] and its transmitters are reliable, but 'Abd al-Rahmān ibn Ghanam رضي الله عنه did not hear [Hadiths directly] from the Prophet ﷺ.'²

This means that the above Tradition is *mursal*. Since 'Abd al-Rahmān ibn Ghanam رضي الله عنه was a Companion,³ it is a *mursal* Tradition related by a Companion; therefore, by scholarly consensus it can be used as a proof.

The *Shari'ah*, however, has not laid down any particular method or form of *Shūrā*. It has not specified what this 'seeking advice' or 'consultation' consists of, or whose opinion should be sought. These details are to be settled by people of insight, according to the requirements of the age they live in and in the light of their own circumstances. It is not a legal requirement that the *Shūrā* have any particular structure, or that there be a special committee or assembly, or that the members of the *Shūrā* council need to be determined, and that they alone are to be consulted in every matter. It may be that at times there is a properly elected committee but at other times there is not, and that the ruler himself selects people whose opinion he deems to be valuable and consults them. It may also be that different individuals are consulted on different occasions; or that various individuals are consulted on a particular issue according to their skills and knowledge. Neither during the lifetime of the Noble Prophet ﷺ nor in the days of the Righteous Caliphate was there any permanent or semi-permanent form of *Shūrā* on a basis comparable in any way to that of modern parliaments, whose members are elected and appointed for a fixed duration. The principles of *Shūrā* were implemented in a very simple, straightforward manner. The Caliph would consult important people and would normally accept whatever was decided as the outcome of their consultation. If the passing of time means that there is a need to develop

¹ Ibn Kathir, *Tafsīr*, vol. 2, p. 150.

² al-Haythamī, *Majma' al-zawā'id*, vol. 9, p. 40; Hadith 14,355.

³ See Ibn Hajar, *al-Isābah*, vol. 4, p. 350; entry 5185.

a more organised *Shūrā* structure, this too could easily be accommodated under the wide and flexible meaning of the term.

That is the beauty of the Islamic dispensation concerning the conduct of politics. After laying down some basic principles, it was left up to people with insight and thorough understanding of political matters as well as the Holy Law to determine the details, according to the needs of the time. The reason is that the Islamic injunctions are not confined to any particular part of the earth, or to any particular era. They are meant to be put into practice all over the globe, for all time. It has often been observed that the requirements essential for the welfare of a people vary greatly according to the times in which they live and their general disposition. There may be individuals or a society for whom it would be simply not feasible, or their best interest, to prescribe a particular framework of *Shūrā*. On the other hand, there may be a people or society where to provide only vague guidelines about *Shūrā* could lead to scores of social evils. Hence Islamic law has not imposed any rigidity in secondary matters; the details of the *Shūrā* can be decided according to the requirements of the time and place. Today, however, if there were only rudimentary principles concerning *Shūrā* and it were left entirely to the ruler to decide to whom to turn for advice and how far to follow it, there would be many negative consequences. It appears that in our age it is necessary to have a proper, well-defined advisory council. Inshallah this subject will be discussed below.

3. THE ISSUE OF THE SHŪRĀ'S POWERS AND AUTHORITY

The second issue in this connection is the question of the role that the *Shūrā* is to play, and what powers and authorities it is to have. Are the recommendations of the *Shūrā* binding on the ruler? And, if it so happens that the members of *Shūrā* are agreed on one point, whereas the ruler takes a different view, is the latter then permitted to act according to his own view?

In general, the jurists and scholars who have written books on Islamic politics seem to incline to the view that the Muslim concept of *Shūrā* does not mean that the views expressed by its members are binding upon the ruler. What it means is that he must hear about all the angles of the question regarding which counsel is sought, without any aspect remaining hidden.

Had he not sought advice, it might be that one aspect or another might remain concealed, but thanks to his consulting people who have an opinion worth hearing, all aspects of an issue are brought to light. Different concerns, opinions and possible solutions are presented, along with arguments of substance, and as a result the ruler will find it easier to make a decision. But once all views and opinions have been heard it is he who will have to decide. The majority of scholars hold that the ruler is not bound to follow the preference of the *Shūrā*. Once he has heard everyone, he shall be free to follow any of these opinions—even if it is not held by the majority of members, and even if it is not held by any member at all, i.e. he is free to follow an opinion that has not been voiced in the *Shūrā*. But he is bound in any case to follow whatever opinion he is truly convinced by owing to the strength of the arguments made in its favour.

Those scholars who subscribe to this view argue from the following *Āyah* of the Holy Qur'ān:

وَشَارِرُهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ

And seek their counsel regarding [the conduct] of affairs. And when you are resolved, put your trust in Allah. (3:159)

Commentators have pointed out that Allah Most High has not specified that this 'resolve' must be in accordance with the outcome of the consultation. What He says is that after making up one's mind one should trust in Allah ﷺ and act according to what one has resolved; Allah will bless this step, if He so wills. Similarly, these scholars derive further arguments from the practice of the Noble Prophet ﷺ and the Rightly Guided Caliphs after him, because during the blessed lives of these august beings it happened a number of times that the opinion held by only a few was adopted, rather than that of the majority. For instance, when the question arose of what to do with the captives taken at the Battle of Badr, the Messenger of Allah ﷺ decided not to act according to the view held by most of those whom he had consulted. From Traditions we learn that Sayyidunā 'Umar and Sayyidunā 'Abd Allāh ibn Rawāḥah ﷺ thought that these captives should be put to death; 'Abd Allāh ibn Rawāḥah even suggested burning them. Sayyidunā Abū Bakr ﷺ however, proposed setting them free for a ransom. The majority of Companions shared the opinion of Sayyidunā 'Umar ﷺ. Some held

the same view as 'Abd Allāh ibn Rawāḥah; others shared Sayyidunā Abū Bakr's opinion that they should be freed for a ransom.

Around two-thirds of the Companions were against permitting the captives to be ransomed. However, the Messenger of Allah ﷺ chose to act upon the view of the minority rather than the majority. It is true that a Qur'ānic reprimand was revealed on account of that decision; the reason, however, was not that the majority opinion had not been followed, but rather that in this particular situation to set the captives free was not the best course of action.

Similarly, when Sayyidunā Abū Bakr al-Šiddiq ؓ decided to dispatch an army under the command of Sayyidunā Usāmah ibn Zayd ؓ, he apparently acted against the majority view. The background to this incident is that during his last days on earth, the Noble Messenger ﷺ assembled an army to fight against some tribes that were under the sway of the Roman Empire, and he himself appointed Sayyidunā Usāmah to command of this force. Sayyidunā Usāmah happened to be very young, and yet he was appointed to lead an army in which were many senior, more experienced Companions, including Sayyidunā 'Umar ؓ. The army had not travelled far when the Messenger of Allah ﷺ passed away. After that, Sayyidunā Abū Bakr ؓ became Caliph. Sayyidunā Usāmah considered the situation very precarious. The enemies of Islam were just waiting to attack the Muslims in this hour of distress. It would not be wise to let the senior Companions be away from Madīnah, for it would give the enemy an excellent chance to attack the city if they found it empty of experienced warriors. The *Anṣār* in this army were of the same opinion. They then asked 'Umar ؓ to go to Abū Bakr ؓ to seek permission for the army to return. The *Anṣār* further said that if the army were not allowed to return, at least the command should be given to a more senior, more experienced Companion than Usāmah. But when Sayyidunā 'Umar presented the first proposal to Sayyidunā Abū Bakr, the latter became very angry and said:

لَوْخَطَقْتِي الْكَلَابُ وَالذِئْبُ لَمْ أَرْدَقْتَهُ قَضَيْ بِهِ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

'Even if dogs and wolves were to tear me apart, I would not repeal a decision of the Messenger of Allah ﷺ.'¹

¹ For further details see *Tafsīr Durr al-manthūr*, vol. 4, p. 88, with reference to the *Musnād* of Imam Ahmad.

When Sayyidunā 'Umar ؓ presented the second proposal, that a more senior, experienced person be put in charge of the army, Sayyidunā Abū Bakr ؓ took hold of Sayyidunā 'Umar's beard and said:

اسْتَعْمَلَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَتَأْمَرْنِي أَنْ أَنْزِعَهُ؟

'He was appointed by the Messenger of Allah ﷺ. Are you telling me to remove him?'

With these words the army was dispatched, contrary to the views held by the remaining companions. Sayyidunā Abū Bakr ؓ himself bade Sayyidunā Usāmah ؓ farewell. He took hold of his reins and said: 'With your permission, may 'Umar stay back with me?' Usāmah granted this request. The result of this expedition was that the army returned victorious. The fact that an army had been sent on a mission in such trying circumstances awed people. History tells us that when both the news of the Noble Prophet's ﷺ death and the news that a part of the Roman empire had been attacked reached Heraclius at the same time, he could not help but exclaim:

مَا بَالْ هُؤُلَاءِ الْقَوْمُ يَمُوتُ صَاحِبُهُمْ ثُمَّ اغْتَارُوا عَلَيْهِ أَرْضَنَا.

'How is it with these people? Their leader dies, and then they attack our territory!'

Likewise, many of the Companions, including Sayyidunā 'Umar ؓ, were not in favour of waging Jihad against those who refused to pay Zakat. Sayyidunā Abū Bakr ؓ, however, was adamant and stood by his decision. On this occasion, Abū Bakr said to 'Umar:

جَارٌ فِي الْجَاهِلِيَّةِ خَوَارٌ فِي الْإِسْلَامِ؟

'A tyrant in the days of Ignorance and now a coward in Islam?'

Sayyidunā 'Umar ؓ quoted this statement to highlight Sayyidunā Abū Bakr's ؓ virtue. He also said: 'One night and one day in Abū Bakr's nocturnal life are better than 'Umar's whole life: the night during the *Hijrah*, and the day on which he spoke those words to me.'³

In any case, those scholars who hold that the recommendations of the

¹ al-Ṭabarī, *Tārikh* (Cairo, 1387/1967), vol. 3, p. 226.

² al-Dhahabī, *Tārikh al-Islām*, vol. 3, p. 20.

³ al-Dhahabī, *Tārikh al-Islām*, vol. 1, p. 321.

Shūrā are not binding upon the ruler say that from the above incidents it can be concluded that the Imam is not obliged to act according to their views and statements and views held by the *Shūrā*. Rather, he is bound to follow the view that he considers to be backed by the strongest arguments. Once all aspects of an issue had been discussed, he is free to adopt whichever approach he deems best. However, some scholars are of the opinion that the following *Āyah*, which was have already cited above, implies that if the members of the *Shūrā* are in agreement, the Imam is not at liberty to adopt a different approach:

وَشَارِعُهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ

And consult them regarding the conduct of affairs. And when you have resolved, put your trust in Allah ﷺ. (3:159)

This view is strengthened by a Hadith related by Sayyidunā ‘Alī ﷺ which is cited by Imam Ibn Kathīr in his commentary on this *Āyah*, with reference to Imam Ibn Marduwiyyah. The wording of the Hadith is:

سُئِلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْعَزْمِ، قَالَ: مَشَارِعَةُ أَهْلِ الشُّورِيِّ ثُمَّ اتَّبَاعُهُمْ

‘When the Messenger of Allah ﷺ was asked about *al-Azm* (resolve), he said: ‘It means to consult the people of the *Shūrā* and then to follow them.’

If the chain of transmission of this Tradition is authentic, then according to how the Messenger of Allah ﷺ interpreted the *Āyah* in question, ‘*Azm*’ means consulting those who deserve to be consulted, and following their advice. This does not necessarily mean that the Imam is not permitted to go against the outcome of the consultation by acting on his own opinion: it may also mean that he should make a resolution according to the outcome of the consultation.

Imam Ibn Kathīr also cites, in the same passage, a Tradition on the authority of ‘Abd al-Rahmān ibn Ghānim ﷺ (in the *Musnad* of Imam Ahmad), that the Messenger of Allah ﷺ once told Sayyidunā Abū Bakr and Sayyidunā ‘Umar ﷺ:

1 Ibn Kathīr, *Tafsīr, Dār Ṭayyibah*, 1420/1999, vol. 2, p. 150.

لَوْ اجْتَمَعْتُمَا فِي مَشْورَةٍ مَا خَالَفْتُكُمَا

‘If you were both of the same opinion in a consultation, I would not go against your opinion.’

It is further argued that on many occasions, the Messenger of Allah ﷺ set aside his own views and adopted those held by the majority of his Companions. In doing so, he taught by practical example that the opinion of the advisory council should be respected. If the Messenger of Allah ﷺ himself showed such respect for it, others ought to do show even more. For example, during the siege of Madīnah by the Meccans he ﷺ did not think of fighting outside the city. According to the *Sīrah* of Ibn Hishām:

كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَكْرَهُ الْخُرُوجَ

‘The Messenger of Allah ﷺ was averse to going out [of the city].’¹

However, those Companions who had not participated in the Battle of Badr were eager for Jihad. The majority of them held that they should leave the city and meet the enemy in the open. The Messenger of Allah ﷺ then accepted this view.

These scholars have another argument in the form of a lengthy Tradition narrated by Maymūn ibn Mihrān ﷺ in which he discusses Sayyidunā Abū Bakr’s ﷺ course of action. Towards the end of this Tradition, he says that whenever a question arose regarding which there were no clear instructions in the Holy Qur’ān or in the Sunnah:

جَمْعُ رُؤُسِ النَّاسِ وَخِيَارِهِمْ فَاسْتَشَارُهُمْ فَإِذَا اجْتَمَعْ رَأِيْهِمْ عَلَيْهِ اُمْرٌ قُضِيَ بِهِ

‘He would gather the leaders and the best of the people and seek their advice. And when they agreed on a matter, he used to decide accordingly.’²

From this we learn that he would act according to the unanimous decision of his advisory body. And as far as the army being commanded by Sayyidunā Usāmah ibn Zayd ﷺ is concerned, or the problem of the people who refused to pay Zakat—in short, all the occasions on which Sayyidunā Abū Bakr ﷺ chose not to act according to the people’s advice—these are examples of the consultation process. The people stated their opinion, but

1 Ibn Hishām, *Sīrah* (Cairo), 1375/1955, vol. 2, p. 63.

2 al-Dārimī, *Sunan, Bāb al-Fityā wa mā fīh min al-shiddah*; Hadith 163.

Shūrā are not binding upon the ruler say that from the above incidents it can be concluded that the Imam is not obliged to act according to their views and statements and views held by the *Shūrā*. Rather, he is bound to follow the view that he considers to be backed by the strongest arguments. Once all aspects of an issue had been discussed, he is free to adopt whichever approach he deems best. However, some scholars are of the opinion that the following *Āyah*, which was have already cited above, implies that if the members of the *Shūrā* are in agreement, the Imam is not at liberty to adopt a different approach:

وَشَارِعُهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ

And consult them regarding the conduct of affairs. And when you have resolved, put your trust in Allah. (3:159)

This view is strengthened by a Hadith related by Sayyidunā ‘Alī which is cited by Imam Ibn Kathīr in his commentary on this *Āyah*, with reference to Imam Ibn Marduwīyyah. The wording of the Hadith is:

سُئِلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْعَزْمِ، قَالَ: مَشَارِعُ أَهْلِ الشُّورِيِّ ثُمَّ اتَّبَاعُهُمْ

‘When the Messenger of Allah was asked about *al-‘Azm* (resolve), he said: ‘It means to consult the people of the *Shūrā* and then to follow them.’¹

If the chain of transmission of this Tradition is authentic, then according to how the Messenger of Allah interpreted the *Āyah* in question, ‘*Azm* means consulting those who deserve to be consulted, and following their advice. This does not necessarily mean that the Imam is not permitted to go against the outcome of the consultation by acting on his own opinion: it may also mean that he should make a resolution according to the outcome of the consultation.

Imam Ibn Kathīr also cites, in the same passage, a Tradition on the authority of ‘Abd al-Rahmān ibn Ghānim (in the *Musnād* of Imam Ahmad), that the Messenger of Allah once told Sayyidunā Abū Bakr and Sayyidunā ‘Umar:

¹ Ibn Kathīr, *Tafsīr, Dār tayyibah*, 1420/1999, vol. 2, p. 150.

لَوْ اجْتَمَعْتُمَا فِي مَشْورَةٍ مَا خَالَفْتُكُمَا

‘If you were both of the same opinion in a consultation, I would not go against your opinion.’

It is further argued that on many occasions, the Messenger of Allah set aside his own views and adopted those held by the majority of his Companions. In doing so, he taught by practical example that the opinion of the advisory council should be respected. If the Messenger of Allah himself showed such respect for it, others ought to do show even more. For example, during the siege of Madīnah by the Meccans he did not think of fighting outside the city. According to the *Sīrah* of Ibn Hishām:

كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَكْرَهُ الْخَرْجَ

‘The Messenger of Allah was averse to going out [of the city].’²

However, those Companions who had not participated in the Battle of Badr were eager for Jihad. The majority of them held that they should leave the city and meet the enemy in the open. The Messenger of Allah then accepted this view.

These scholars have another argument in the form of a lengthy Tradition narrated by Maymūn ibn Mihrān in which he discusses Sayyidunā Abū Bakr’s course of action. Towards the end of this Tradition, he says that whenever a question arose regarding which there were no clear instructions in the Holy Qur’ān or in the Sunnah:

جَمِيعُ رُؤُسِ النَّاسِ وَخِيَارُهُمْ فَاسْتَشَارُهُمْ فَإِذَا اجْتَمَعْ رَأِيْهِمْ عَلَيْهِ امْرٌ قُضِيَ بِهِ.

‘He would gather the leaders and the best of the people and seek their advice. And when they agreed on a matter, he used to decide accordingly.’²²

From this we learn that he would act according to the unanimous decision of his advisory body. And as far as the army being commanded by Sayyidunā Usāmah ibn Zayd is concerned, or the problem of the people who refused to pay Zakat—in short, all the occasions on which Sayyidunā Abū Bakr chose not to act according to the people’s advice—these are examples of the consultation process. The people stated their opinion, but

¹ Ibn Hishām, *Sīrah* (Cairo), 1375/1955, vol. 2, p. 63.

² al-Dārimī, *Sunan, Bāb al-Fityā wa mā fīh min al-shiddah*; Hadith 163.

when Sayyidunā Abū Bakr ﷺ insisted that his was the correct view, the people retracted their former stance. It did not happen that after Abū Bakr ﷺ had adopted a view, any member of the advisory body would consider it wrong. Rather, seeing Sayyidunā Abū Bakr ﷺ advocating his view with full force caused the people to be convinced by his view and change their own. Sayyidunā ‘Umar ﷺ said about the expedition against the withholders of Zakat:

نَوَّالَهُ مَا هُوَ إِلَّا مَا قَدْ شَرَحَ اللَّهُ صَدِرَ إِبْرَاهِيمَ بْكَرَ فَعَرَفَ أَنَّهُ الْحَقُّ

‘So, by Allah, when I saw that Allah had opened Abū Bakr’s heart [to adopt this position], I realized that it was the truth.’¹

Hence, the decision that was ultimately taken was not really against the view held by the advisory body. It was not that Sayyidunā Abū Bakr ﷺ had made a decision with which the advisory body was dissatisfied. Any differences with the advisory body had occurred during the process of consultation. Sayyidunā Abū Bakr’s ﷺ determination persuaded those who initially disagreed with him to change their own opinion. Hence one cannot take this instance as a proof that the Imam has the right to go against the unanimous decision of the council.

Such, then, are the two different opinions concerning the question whether the Imam is bound to abide by the decision of the advisory body. Both sides have arguments to support their views. I personally incline more to the first opinion, namely that the Imam is not bound by the council’s opinion. The reason is that the word *Shūrā* or *Mashwarah* (counsel) is itself proof that a person who seeks advice is not bound to abide by it. Ḥakīm al-Ummah Mawlānā Ashraf ‘Alī Thānví ﷺ said that even a slave-girl like Sayyidah Barīrah ﷺ understood this point. Upon her emancipation, she was given the choice either to confirm her marriage to her husband or to revoke it. The Messenger of Allah ﷺ advised her to keep her marriage. Upon this, she enquired: ‘أَتَمْرَنِي?’ (‘Do you order me to?’)—meaning, ‘If you order me, I shall obey without hesitation.’ The Messenger of Allah ﷺ replied: ‘أَنَا شَافِعٌ لِّي’—‘I am merely interceding.’ Sayyidah Barīrah ﷺ replied: ‘لَا حَاجَةٌ لِّي’ (‘I have no need for him.’)—in other words, ‘I prefer not to follow this

advice.’ Although she chose not to accept the advice given, the Messenger of Allah ﷺ did not censure her in the slightest.¹

This teaches us that by its very nature, advice and counsel are not binding upon those who seek it or who are given it, but the Holy Qur’ān has enjoined all leaders to seek such advice. From this we learn that the actual ruling ought to be that a piece of advice should be regarded as being simply advice, not an instruction; and that a leader should make his decision in the light of arguments. Obviously, however, this cannot be said to apply to any democratic leader who has come to power only on the basis of a majority vote, and who does not necessarily have any character traits or qualifications such as would entitle him (under a different system) to such a post. This can apply only to a leader who has been elected strictly on the basis of their capabilities. After all, we are talking after about a Muslim Caliph, not a secular ruler.

Hence, first of all, the right to decide contrary to the counsel given by the advisory body can only be accorded peculiar to a ruler who possesses all the qualities discussed in detail above, and who has been chosen by the *Ahl al-Hall wa al-Aqd* of this *Ummah* because they consider him to be capable of making such decisions.

The second point is that the rule of such a person is not like that of an absolute monarch. Rather, he rules in the light of the principle that *الحُكْمُ لِلَّهِ* (‘Sovereignty belongs to Allah alone’). In other words, he himself makes sure that he abides by all the prescriptions of the Holy *Shari‘ah*. He abides by the Holy Qur’ān, the Sunnah and the *Ijmā‘* (consensus) of this *Ummah*. When he makes a decision, his decision is already restricted by the condition that it must not violate any injunction mentioned in the Holy Qur’ān or the Sunnah. This implies that he will give due consideration to the demands of justice and equanimity. He knows that any decision that results in disobedience to Allah is not acceptable, that such a decision can be repealed in a court of law, and that if he still does not return to the path of guidance he will be an evildoer, which may lead to his being removed. Hence, not having to abide by the counsel of the advisory body does not mean that he enjoys unlimited rights and authority, or that he may rule like an absolute monarch. The advisory body is to consider measures

¹ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Zakāh*; Hadith 1400.

¹ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Talāq*; Hadith 5283.

that lie within the limits of what is permissible. The ruler is to seek their advice as to all possible solutions within the bounds of what is permissible. Once he has been informed of all the relevant circumstances and heard everyone's point of view, he is at liberty to adopt any solution that is legally permissible. This does not lead to the kind of absolutism that was practiced amongst the kings of old.

The third point is that it is surely the Imam's duty to seek advice, and to attend the advisory council in person so that he may listen impartially and objectively to everyone's opinion. After that, he should listen open-mindedly to the arguments that substantiate those opinions. He is not to keep aloof from the meeting and to make any decision contrary to the views of the advisory body without listening to and considering their views and supporting arguments.

In the light of the above points, the actual ruling appears to be that a ruler who has all the necessary characteristics has the right to decide contrary to the recommendations made by the advisory council. However, there may be circumstances where a ruler is required to remain within certain limits.

The reason for this is that nowadays there are no rulers who possess all the necessary characteristics and fulfil all the conditions. In this situation, which stems from the general degradation that comes with the passing of time, it has become unavoidable to allow relaxation in some conditions. As has already been pointed out, the interpretation of the word 'ādil (just, righteous) has changed so much over time that latter-day scholars now deem a person whose virtues outweigh his vices to be 'ādil. This is one way of compromising with the overall decline and decadence of our times. There was a time when in order to be considered as a reliable witness one had to abide by all the obligations of the *Shari'ah*, and refrain from everything that it forbade or disapproved of. But when Imam Abū Yūsuf was appointed as *Qādī* he realised that no such witnesses were available any longer. Therefore it was decreed that provided he has some sense of propriety, even the evidence of a reprobate could be accepted. In short, the jurists' eyes were never closed to this reality. The earlier scholars laid down that it was a prerequisite for the Imam or Caliph to be not only a scholar, but a *Mujtahid*. But where could one now find a true *Mujtahid*? Hence this condition was later relaxed. But to allow a person who barely fulfils the

lower standards to exercise the same authorities and rights as the Rightly-Guided Caliphs would constitute an immense impropriety. Hence it can be said, in line with the views held by the second group of scholars—those who consider that a leader is bound by the views of the advisory council—that the leader may not completely disregard any recommendations presented to him through his advisory body. But in a situation in which there is a perfect leader it is said that the Imam's decision is binding, as he fulfils all the required conditions. His sense of responsibility, religiousness, piety, knowledge, experience, in short, every virtuous trait, can be fully relied upon. However, if there is no such leader then it seems to be appropriate to bind him to a certain extent to the views held by the advisory body, especially in the light of the Tradition cited above.

One way of binding him in this manner could be to divide rules and regulations into two categories: one comprising orders of a general nature, the other comprising orders pertaining to administrative matters. As regards orders that have legal status, it should be kept in mind that in an Islamic state, not one person has the right to make a law that is not according to the *Shari'ah*. However, law-making is possible within the domain of permissible matters. The leader can be compelled to abide by the views of the advisory body. But to oblige him to seek the approval of the advisory body in all administrative matters, for every measure he intends to take, would be a serious obstacle to running the government. In administrative matters, therefore, he should be authorised to act as he deems fit.

This can be illustrated through the following example. The jurists concede that at times of necessity, when the *Bayt al-Māl* or state treasury is not in a position to cover its expenditure, the ruler is permitted to levy taxes to fill the treasury. These taxes, which are called ضريبة النائية (*daribat al-nā'ibah*), meaning an 'emergency levy', will be discussed later, inshallah. If it becomes unavoidable to levy additional taxes, the ruler must first pass a law to that effect. If that draft law is put before the advisory body, and the latter all consider that there is no need for further taxes, the Imam must abide by that decision. He will not be allowed to levy any further taxes unless the advisory body approves this step. In our days, the constitution lays down in which matters the Imam can act independently and in which he must follow the decisions of the advisory body.

4. MAKING DECISIONS ACCORDING TO THE MAJORITY VIEW

In this connection there is another point to be discussed. What role does the majority view play in the Holy *Shari'ah*? Is the decision of the advisory body only to be considered to be binding if it is unanimous, or can a decision be implemented that has been backed by the majority?

As already mentioned, in a democracy the majority view determines what is right and what is wrong, and everything is decided in the light of the majority view. 'Allāmah Muḥammad Iqbāl, the 'Poet of the East', aptly remarked:

'Democracy is a form of government in which people are counted instead of being weighed.'

In other words, in a democracy no account is taken of people's individual characteristics. It is purely a matter of how many people hold which opinion. But when one looks at the injunctions of the Holy Qur'ān and the Sunnah, it becomes clear that when it comes to deciding what is right or lawful, or what is wrong or unlawful, it does not matter in the least what opinion the majority of people have. The Holy Qur'ān explains the reason in a forthright manner:

وَإِنْ تُطِعْ أَكْثَرَ مَنْ فِي الْأَرْضِ يُضْلُّكُ عَنْ سَبِيلِ اللَّهِ إِنْ يَتَبَعُونَ إِلَّا الظَّنَّ وَإِنْ هُمْ إِلَّا يَخْرُصُونَ

Were you to follow the majority of those on Earth, they would make you stray from the Path of Allah. They follow only their own opinions, and they are merely speculating. (6:116)

Hence, the majority view does not influence the decision as to what is right and wrong. Such decisions are to be made on the basis of what the Holy Qur'ān and the Sunnah say about an issue. Once the Holy *Shari'ah* has given its verdict, the issue is not to be reviewed in the light of the opinion held by the majority. The late Iqbāl said about this kind of majority view:

کور مغز دو صدر فکرانی نبی آید

'The brains of two hundred donkeys cannot produce one human thought.'

This does not mean that the majority view is altogether worthless, but that it is simply not called for in matters where the *Shari'ah* has decided already. There are two instances in which the majority view is considered as reliable. One is when there are several options within the limits of permissibility, and one of them must be chosen. On such an occasion, one can decide according to the opinion of the majority. The written, traditional proof for that is that Sayyidunā 'Umar al-Fārūq رض formed a committee consisting of six senior Companions to decide who should succeed him as Caliph. Sayyidunā 'Uthmān, Sayyidunā 'Al, Sayyidunā 'Abd al-Rahmān ibn 'Awf, Sayyidunā Ṭalḥah, Sayyidunā Zubayr and Sayyidunā Sa'd ibn Abī Waqqās رض were the members of this committee. These blessed souls were entrusted with the responsibility to meet and discuss who should be the next Caliph. Sayyidunā 'Umar رض gave instructions that if they could not reach a unanimous decision, the candidate accepted by the majority of them should be chosen. If, for example, four out of six considered a certain candidate suitable, and the other two someone else, then the view held by those four was to be considered and their candidate would be selected. Sayyidunā 'Umar's رض words are reported to have been:

تَشَاءُرُوا فِي امْرِكُمْ فَإِنْ كَانَ اثْنَانُ وَاثْنَانَ فَأَرْجِعُوهُ فِي الشُّورِيِّ وَإِنْ كَانَ أَرْبَعَةُ وَاثْنَانَ فَخُذُوهَا صَنْفَ الْأَكْثَرِ

'Consult each other in your affairs. If two of you hold one opinion and two another, consult one another again, and if four of you hold one opinion and two another, take the majority's view.'

On this occasion, Sayyidunā 'Umar رض considered the majority view reliable.

Another occasion where one might consider the majority view as reliable is in *mujtahad fihā* matters, meaning issues on which *Mujtahidūn* hold varying views concerning the interpretation of the Holy Qur'ān or the Sunnah. In such instances, one can at times take the majority view into consideration: that is, the view held by the majority of jurists. Some scholars have explained this as follows. Even though the majority view does not consist an argument in itself, it is nevertheless an indication in favour of an argument; for if so many accomplished, virtuous, and pious scholars share one opinion, that opinion must be backed by a strong argument. But this does not necessarily always apply. There are many matters on which

Imam Abū Ḥanīfah رض alone holds one opinion, while other *Mujtahidūn* and jurists hold another. The present writer heard from his respected father رض that Shaykh al-Hind [Maḥmūd al-Ḥasan] رض said: 'When Imam Abū Ḥanīfah رض is the only one to hold a certain view and it differs from that of the other *Mujtahidūn*, I am convinced that he must have extraordinarily strong arguments to support his position; if he had not, he would never have gone against the view held by such a great number of scholars.'

Although the majority view does not constitute an absolute argument in matters of *Ijtihād*, it can be used as an indicator as to which opinion is to be preferred, especially when there seems to be a clash between the arguments put forward by each party. For these reasons, one may lay down in the manual of the advisory body that matters falling within the bounds of permissibility may be decided according to the majority view.

Here it seems appropriate to make another suggestion. When the members of the advisory body are divided on a certain issue, half of them holding one opinion and half another, with neither group being in the majority, the opinion favoured by the chairman of the advisory is taken into consideration. This means that in such an eventuality, the chairman is given one more vote, the so-called casting vote. This procedure is based on the guidelines of Sayyidunā 'Umar رض. According to one Tradition, when he appointed six Companions to choose a Caliph he said to them:

وَإِنْ اجْتَمَعَ رَأْيُ ثَلَاثَةٍ وَثَلَاثَةٍ فَاتَّبِعُوا صِنْفَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ

'If three of you hold one opinion and three another, then follow the view of the group to which 'Abd al-Rahmān ibn 'Awf belongs.'

Similarly, at times some people are included in the consultation whose opinion is not counted afterwards, when it comes to reaching a final decision. These individuals are called 'non-voting members'. The basis for this is also found in the instructions given by Sayyidunā 'Umar رض. He permitted his son 'Abd Allāh رض to attend the consultation, but nothing beyond that:

يَشَهِدُكُمْ عَبْدُ اللَّهِ بْنُ عَمْرٍ وَلَيْسَ لَهُ مِنَ الْأَمْرِ شَيْءٌ

'Abd Allāh ibn 'Umar shall be with you, but he shall not have a say in the matter.'²

1 Ibn Sa'd, *Tabaqāt*, vol. 3, p. 58.

2 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Manāqib*, *Bāb Qissat al-bay'ah wa al-ittifāq 'alā 'Uthmān*; Hadith 369.

5. THE CHARACTERISTICS OF THE ADVISORY BODY

The third question concerning the advisory body is whether or not its members need to have certain characteristics. As already discussed, the Caliph is to be elected through the *Ahl al-Hall wa al-'Aqd*, who are themselves to form the advisory body. This shows clearly that not every Tom, Dick and Harry is fit to become a member of the advisory body; its members must fulfil some criteria. Some are obvious, such as possessing knowledge of and insight into state and government matters, or being an honest, trustworthy person. Others have not been laid down by the Holy *Shari'ah*; it has been left to the wise men of a particular era to decide these characteristics according to the prevalent needs and conditions. The term *Ahl al-Hall wa al-'Aqd* itself shows that these should be people whose insight, understanding, honesty, and faithfulness can be trusted by the *Ummah* in their role as a collectivity.

In a tribal society, this kind of people were well known and there was no need to elect them, but since that situation no longer exists it will be necessary to elect such people. Such an election should be based on universal adult suffrage, or else there should be an electoral college. The *Shari'ah* has not set down any eternal, unalterable guidelines in this regard. If the population of a country happens to be educated and they have a high level of political awareness, elections can be conducted through adult suffrage. If the people's overall condition is such that a step-by-step electoral process would be more appropriate, that too is not ruled out by the Holy *Shari'ah*.

6. WOMEN ON THE ADVISORY BODY

One question that has been raised here is whether women may also become members of the advisory body. Contemporary authorities on Islamic politics hold varying opinions. Some say that there is nothing to prevent women from becoming members of the advisory body since there were times when the Noble Prophet ص sought women's advice. The incident that happened at Ḥudaybiyyah is well-known. When none of the Companions took off their *Iḥrāms* (pilgrimage vestments), although there had been several announcements to this effect, his wife Umm Salamah رض advised the Noble Prophet ص to set a practical example by taking off his *iḥrām* and sacrificing his animal. The Noble Prophet ص followed this advice. On seeing

him, the Companions rushed to follow his example in such haste that they began shaving one another's heads.¹ It is true that the Messenger of Allah ﷺ followed Sayyidatunā Umm Salamah's ﷺ advice on that occasion, but it is a rather weak argument in favour of making women regular members of the advisory body. Another argument put forward is that when Sayyidunā 'Umar ﷺ entrusted six Companions with the task of electing a new Caliph, one of them, Sayyidunā 'Abd al-Rahmān ibn 'Awf ﷺ disengaged himself from this task and appointed someone to ask the people whom they would like to see as the new Caliph. History relates that:

ثُمَّ نَهَضَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ رَضِيَ اللَّهُ عَنْهُ يَسْتَشِيرُ النَّاسَ فِيهِمَا وَيَجْمَعُ رَأْيَ الْمُسْلِمِينَ، حَتَّىٰ خَلَصَ إِلَى النِّسَاءِ الْمُخْدَرَاتِ فِي حِجَابِهِنَّ

"Abd al-Rahmān ibn 'Awf ﷺ got up and consulted people about the two of them [i.e. Sayyidunā 'Uthmān and Sayyidunā 'Alī ﷺ]. He collected the views of the Muslims... even those of women concealed in veils."²

These scholars hold that there is nothing wrong in women becoming members of the advisory body, provided they abide by the restrictions of the Holy Law and observe the veil. However, this argument is not particularly strong, either, because the same Tradition also says:

وَحَتَّىٰ سَأَلَ الْوَلَدَانِ فِي الْمَكَاتِبِ

'And he even asked schoolboys.'³

Now, obviously no one would infer from the above that schoolboys should also be made members of the advisory council.

The other group of scholars inclines to the view that it is not in keeping with the sense of the Holy Law to appoint women as members of the advisory body, because of the Hadith, cited already, in which the Messenger of Allah ﷺ is reported to have said:

وَأَمْرُكُمْ إِلَيْنِي نِسَائِكُمْ فِي بَطْنِ الْأَرْضِ خَيْرٌ لَكُمْ مِنْ ظَهِيرَهَا

'...and when your affairs are entrusted to your womenfolk, the Earth's belly will be better for you than her back.'⁴

1 Bukhārī, *Šaḥīḥ, Kitāb al-Shurūt*; Hadith 2732.

2 Ibn Kathīr, *al-Bidāyah wa al-nihāyah* (Beirut, 1997/1418), vol. 5, p. 227; *Sanah arba' wa ishrāq*.

3 Ibn Kathīr, *al-Bidāyah wa al-nihāyah*, ibid.

4 al-Tirmidhī, *Jāmi' (Šaḥīḥ)*, *Bāb 87*, Hadith 2266; classed as *Gharīb*.

However, this Hadith, too, is not applicable evidence on this point, because the situation of which it expresses disapproval is that all decisions are entrusted to women and that men follow the views held by women. But that does not mean that it is not permissible to seek women's advice. Although both sides of the dispute have arguments to substantiate their views, they are not strong enough to enable one to arrive at a definitive decision as to whether women may be included in the advisory body. However, if it is decided that they are to be included in the advisory body, the prescriptions of the *Shari'ah* concerning the veil must be duly regarded.

7. INCLUDING NON-MUSLIMS IN THE ADVISORY BODY

The fourth issue is whether non-Muslims may become members of the advisory body. The Holy Qur'ān tells us the following in this regard:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَخَذُوا بِطَائِفَةً مِنْ دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا وَدُوَامًا عَنِتُّمْ
قَدْ بَدَتِ الْبُغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفِي صُدُورُهُمْ أَكْبَرُ

O you who believe, do not take for intimates folk other than your own, who would spare no pains to ruin you; they love to hamper you. Hatred is already apparent from [the utterances of] their mouths, but that which their bosoms hide is worse. (3:118)

Some scholars argue on the basis of this Āyah that non-Muslims cannot be included in the advisory body. The position, however, is not as straightforward as that. According to the exegetes of the Holy Qur'ān, the gist of this Āyah is that any non-Muslims who are inclined to enmity must not be taken into confidence by the Muslims where some matters are concerned. Some of the Traditions cited by 'Allāmah 'Alūsī ra in connection with this Āyah show that a number of Muslims did maintain friendly relations with Jews whom they had befriended during the Days of Ignorance, as a result of which some of the Muslims' secrets were exposed. Other Traditions make it very clear that this Āyah forbids the Muslims to befriend Hypocrites or to confide in them.¹

1 al-Ālūsī, *Rūḥ al-ma'āni*, vol. 4, p. 37.

It is obvious, of course, that people who are hostile towards the Muslims must not be confided in, and also that they cannot become members of the advisory body. However, jurists have declared it permissible for suitably qualified non-Muslims who live as peaceful, law-abiding subjects in an Islamic state to be made members of the advisory body.

During the days of Sayyidunā 'Umar al-Fārūq رض there were times when the *Shūrā* was called for a meeting and some *Dhimmīs* (protected non-Muslims) attended. Imam al-Sarakhsī رض mentions this fact in his *Mabsūt*. Imam al-Sarakhsī states, after describing an incident that took place in the *Shūrā* of Sayyidunā 'Umar رض:

وَفِيهِ دَلِيلٌ عَلَى أَنَّ لَا بَأْسَ بِأَنْ يَحْضُرَ بَعْضُ أَهْلِ الْكِتَابِ مَجْلِسَ الشُّورِيِّ فَإِنْ
النَّصَارَى الَّذِي قَالَ مَا قَالَهُ قَدْ كَانَ حَضُورًا مَجْلِسَ عُمَرَ رَضِيَ اللَّهُ تَعَالَى عَنْهُ وَلَمْ
يُنْكِرْ عَلَيْهِ

'And this proves that there is no harm in some of the People of the Book attending the meeting of the *Shūrā*, for the Christian who said whatever he said was present at Sayyidunā 'Umar's meeting, and this was not considered disallowed wrong.'

It appears that Sayyidunā 'Umar al-Fārūq رض also called in some non-Muslims in as well, to help him decide on certain matters pertaining to non-Muslims. From this we learn that they are not be consulted regarding the communal concerns of the Muslims, but that there is nothing wrong in consulting non-Muslim citizens when it comes to settling issues concerning themselves, or any other permissible general issue.

8. LAW-MAKING

Nowadays it is the Parliament's duty to make laws. This is why it is called the legislative or law-giving institution. A secular democracy does not restrict the parliament in its legislative role, apart from any restrictions that may be specified in the constitution; and the need to abide by the constitution as well as the restrictions mentioned therein will have been set down by the parliament itself, or by whichever body drafted the constitution. The parliament in turn has the power to remove constitutional restrictions

or amend them. Hence it can be said that the restrictions on parliaments today tend to be minimal.

The highest constitution of an Islamic state consists in the Holy Qur'ān and the Sunnah of Allah's Final Messenger صلی اللہ علیہ وسّلّم. This constitution is not subject to any kind of amendment or change, and all other laws need to be subordinate to the Holy Qur'ān and the Sunnah. Subject to this principle, there can be three kinds of law-making in an Islamic state.

The first kind concerns matters that have been clearly regulated by the Holy Qur'ān and the Sunnah of Allah's Messenger صلی اللہ علیہ وسّلّم, and which allow no different interpretations or elucidations. These regulations are to be sanctioned as law of the state. This can be done in two ways. The first is to put them in writing as 'codified law' and oblige the courts of law to decide cases according to this law. Alternatively, instead of recording these regulations as codified law, the courts can be compelled to decide all cases according to the Holy Qur'ān and the Sunnah. During each legal proceeding, they should turn to those sacred sources, understand the rulings contained therein, and decide accordingly. Obviously, in the latter case it is a prerequisite that the judges have thorough knowledge of the Holy Qur'ān and the Sunnah, so that they may easily find the relevant rulings.

The second kind of law-making concerns those matters that are not clearly ruled on in the Holy Qur'ān and in the Sunnah, which cannot be decided without resorting to *Ijtihād* and deductive reasoning, or regarding the interpretation of which scholars may differ. When there is a need to formulate laws on such questions, it is necessary to resort to *Ijtihād* and rational deductions; or, in case of different juristic opinions, to opt for one view rather than another. This too, can be one in of two ways.

Firstly, such matters should be put into writing and be circulated as statute law. Alternatively, there should be a brief law compelling the courts either to choose any juristic point of view by themselves, and to decide their cases then accordingly, or to adhere permanently to one *madhhab* (school of jurisprudence), e.g. the Ḥanafi *madhhab*, and decide each case according to its tenets. But what viewpoint is held by Ḥanafi scholars on any particular matter? The courts would have to find the answers in authentic books of jurisprudence.

Obviously, this second method can be put into practice only when the judges have expert knowledge of the Islamic sciences. Without that, it would

not be possible to put the second option into practice, as any layman in the Islamic sciences would be prone to make serious mistakes. In the early centuries of Islamic history, the first option was put into practice. The *Qādis* (judges) were scholars with profound knowledge, and they would decide cases according to their knowledge. But when *Qādis* were no longer so learned, a number of *Muftīs* were appointed to assist them. The *Qādi* would take a *fatwa* (legal ruling) from them and then decide the case accordingly.

Nowadays, we are living in an age of corruption. Unless laws are properly articulated and put into an appropriate framework, there might be many circumstances that would trigger corruption. Hence, it would be more appropriate to codify and implement these laws. But obviously this would require a group of experts in the field of Islamic jurisprudence and qualified to rephrase the Islamic juristic injunctions as actual legal maxims and laws. That is what a group of jurisprudents did during the last era of the Ottoman Caliphate, when the renowned *Majallat al-ahkām al-Adliyyah* (in Turkish, 'Mecelle'), a compilation of legal maxims, came into being. For some time a number of Muslim countries adopted the *Majallah* as law.

However, such codification takes time and requires much hard work. Hence, the first option can be opted for as a transitory arrangement, until full and proper codification of laws has been achieved. One proposal, hailed with much fanfare, is that both kinds of law-making should be left to the Parliament. In other words, Parliament should decide what the guidance contained in the Holy Qur'ān and the Sunnah really demand. This might be acceptable, but only if the Members of Parliament are elected on basis of their knowledge of the Holy Qur'ān and the Sunnah. However, in the present age this is simply not the case and will most probably not be so, either, in the near future. In general, Members of Parliament are not merely unaware of the injunctions contained in the Holy Qur'ān and the Sunnah; also, in most cases they do not even have the ability to understand these matters. How, then, could one consider their interpretation of the Holy Qur'ān and the Sunnah reliable? This is completely impracticable.

The third kind of law-making pertains to permissible matters regarding which the Holy *Shari'ah* has not laid down any particular rules and regulations. Many of the laws that the Parliament makes nowadays falls into this category. For example, how much salary and perks should be given to government employees, laws pertaining to city governments (municipal

boards), military laws, etc. But since there might be details in these laws that are not in congruence with the principles laid down in the *Shari'ah*, one should consult experts on *Shari'ah* before finalising and implementing any such law, so as to avoid any problems with compliance.

In most countries nowadays, the parliament alone is involved in law-making. Once the parliament has drafted any law, it presents the same as a matter of formality to the president or monarch to sign and approve it. If there happens to be any major difference concerning a new law, it is at best being sent to the parliament for revision. If the parliament does not make any changes to it, then the president has no choice but to sign.

In an Islamic state, expertise in the Islamic sciences is a pre-requisite for law-making of the first and second type. In general, the members of parliament do not have the required capability to interpret the Islamic injunctions in a correct and authentic manner. Hence, there is need for an institution which comprises scholars of the Holy *Shari'ah* who are qualified to interpret and explain the Islamic injunctions according to its established principles. Scholars from other ways of life may also be included in that institute in order to explain the actual conditions in other departments. However, once they have given a clear picture, the onus of determining applicable laws shall rest with those who have full mastery the principles stated in the sources of the *Shari'ah*, which are the Qur'ān, the Hadiths, *Ijmā'* (consensus), and *Qiyās* (analogy). This institution should be given permission to make laws of the first two kinds, or, after making such laws, they could be sanctioned through the parliament, as a matter of formality. If the parliament has some reservations concerning these proposals, then they could send their concerns and reservations to this institution, so that they may review their proposal in the light of this feedback and make amendments, if necessary, or remove these concerns and reservations by giving some rational arguments and explanations, after which the parliament ought to sanction the laws.

One objection to this proposal is that under this system, the religious scholars would have the monopoly on making laws, and that that would be a kind of theocracy or papal system. However, this objection has already been answered, in the discussion of theocracy. My book *Nifāz-i Shari'at awr us kā ṭarīqa-i kār* ('Adherence to *Shari'ah*, and how to apply it', in Urdu) discusses this topic at length, explaining the differences between

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the criteria for capability in the papal system and amongst our Muslim scholars. However, in short it may be said that in any branch of learning or way of life, only the views of those who have acquired expertise in the relevant field are considered reliable. When it comes to understanding the Holy Qur'an and the Sacred Hadiths, only the views of those who have studied these sources in depth are to be considered as reliable. This cannot be compared with the papal system, and so the accusation that they are similar is baseless. There is a vast difference between Christianity and Islam, as we have seen in our discussion of theocracy. Any Muslim who has the required knowledge and ability deserves to be called an 'ālim, a scholar of the Islamic sciences.

The parliament is entitled to make laws that fall in the third category by themselves. However, draft laws still need to be scrutinised to see whether there are any secondary points that are not *Shari'ah*-compliant. Before being finalised, it should be presented to the community of scholars.

At present, the president or monarch of a country has no choice but to endorse any law put before them. This is a violation of the freedom of conscience. A head of state should be given the right to refuse to sign, in which case the law could be sanctioned through the signature of the Leader of Parliament or the Speaker, so as to avoid the situation in which Queen Victoria reportedly remarked, while signing a document: 'I consider it wrong, but I am still signing it.'

Apart from that, there are many legal complexities in the present age. A law has to pass through so many stages before it is finally passed, that it is—from the Shar'i point of view not possible that it still contains any flaw. It further seems necessary that every citizen should be given the right to challenge a law in any higher court of law, in case it does not comply with the Holy Qur'an or the Sunnah. There should be seasoned scholars of the Holy Qur'an and the Sacred Hadiths who could examine the complaint, listen to the government's side, and decide then in the light of both parties' arguments whether the complaint was justified or not. In case the complaint was justified, the court shall order the government to review and amend the law. The court's hearing of the case would be just like in the American System, where the court has got the right to repeal any law that had been passed by the parliament. In our country, there are the Federal *Shari'ah* Court as well as the *Shari'ah* Appellate Bench to

serve this purpose, but there are some organizational flaws in both setups. First of all, the experts on Qur'an and Hadith ought to be in the majority, and second, the appointment of scholars as members of these courts is temporary and dependent on the good will of the president. Hence the government still has some doors open to have judges changed, in case they decide against the government, and thus to obtain the judgement they would like to hear. And this has happened in the past. If these two flaws are remedied, then indeed this institution could play a vital role in putting laws in an Islamic mould.

9. OBEDIENCE TO THE LEADER AND ITS LIMITATIONS

The Holy Qur'an and the Sunnah state that it is obligatory to obey the ruler or leader. In other words, once a person has been appointed as leader in accordance with the requirements and procedures described above, one must obey all of his commands that fall within the limits prescribed by the Holy Qur'an and the sacred Hadiths. The Holy Qur'an tells us:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَئِكُمْ أَنْهَاكُمْ

O you who believe, obey Allah and obey the Messenger and those in authority among you. (4:59)

In this Ayah Allah ﷺ makes it clear that in addition to obedience to Allah and the Messenger ﷺ, it is obligatory to obey those invested with authority from among the people. Obedience to Allah ﷺ and to His Messenger ﷺ is therefore incumbent upon everyone, including those in authority. Moreover, those who are not invested with authority have to obey those who are. There are two aspects to this second kind of obedience.

Firstly, when the Imam orders any permissible thing the public must obey him. If, for example, the Imam orders the people to fast on a certain day, it is obligatory for them to do so. 'Allāmah Ibn 'Ābidīn رحمه الله states, citing several jurists:

طاعة الإمام في غير معصية واجبة ولو أمر بصوم يوم وجب

'It is obligatory to obey the Imam in any matter that does not entail dis-

obedience. If he orders the people to fast on a certain day, it is obligatory [to do so].¹

Similarly, if the Imam orders the people to refrain from a lawful act it is incumbent on them to obey him. A previously permissible action may become impermissible as a result of his order. It is therefore obligatory on the people, from the *Sharī'ī* point of view, to abide by whatever traffic regulations the government may devise. In addition, the jurists quote the following maxim:

تصريف الامام بالرعاية منوط بالمصلحة

‘The Imam’s disposal of the people’s affairs must be in their interest.’

That is to say, it is obligatory to obey the Imam’s orders provided they are in the interest of the public and their welfare. If the Imam’s orders are not in the public interest but are meant to harm the people or tyrannise them, it is no longer obligatory to obey them.

This principle is derived from the Holy Qur’ān, from the Āyah in which Allah Most High addresses Sayyidunā Dā’ūd ﷺ:

يَا دَاوُودُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُمْ بَيْنَ النَّاسِ بِالْحُقْقِ

O Dā’ūd, We have made you *Khalīfah* upon Earth, so judge rightly between people. (38:26)

Moreover, it is related from the Noble Prophet ﷺ that he said, while seeing off an army he had sent on an expedition, that they were to obey their leader and not dislike anything their leader tells them. Later on, when the leader of that army asked his people: ‘Did the Messenger of Allah ﷺ not tell you to obey me?’ they replied in the affirmative. He then told them to light a fire. Once it was ablaze, he told them to jump into it. The Companions were perplexed. Some intended to comply, but others stopped them from doing so, saying: Did we not hasten to the Noble Prophet to escape the Fire? While they were arguing about the matter, the fire went out. When the Messenger of Allah ﷺ heard about the incident, he said:

لَوْ دَخَلُوهَا مَا خَرَجُوا مِنْهَا أَبْدًا، أَنْمَا الْطَّاعَةُ فِي الْمَعْرُوفِ.

1 Ibn ‘Ābidīn, *Radd al-muhtār*; (Beirut, 1412/1992); vol. 5 p. 422. *Maṭlab tā’at al-imām wājibah*.

‘Had they gone into it, they would never have emerged from it. Obedience is only [due] in what is right (*ma’rūf*).²

The second aspect of obedience concerns *mujtahad fih* matters, meaning those on which the honourable jurists hold different opinions, with followers of one school of thought considering something permissible and followers of others considering it impermissible. Once the Imam gives his verdict on such a matter, it is considered as decided according to his verdict and becomes either permissible or impermissible according to his decree.

حُكْمُ الْحَاكِمِ رَافِعُ الْخَلْفَ ('The Imam’s verdict removes all differences of opinion.') The people have then to act according to the position adopted by the Imam.

This can be illustrated through the following example. There is a difference of opinion as to how the Eid prayer should be offered. The Ḥanafī scholars hold that there are six additional *Takbīrs* in the Eid prayer: three in each *rak‘ah*. This is based on what has been related from Sayyidunā ‘Abd Allāh ibn Mas‘ūd رضي الله عنه. According to another Tradition, related on the authority of Sayyidunā ‘Abd Allāh ibn ‘Abbās رضي الله عنهما there are twelve additional *Takbīrs* in the Eid prayer: seven in the first *rak‘ah* and five in the second. This opinion was adopted by Imam al-Shāfi‘ī رضي الله عنه. Furthermore, it is recorded that Imam Abū Ḥanīfah’s colleagues Imam Abū Yūsuf and Imam Muhammad رضي الله عنهما also acted on this view, despite their adherence to the Ḥanafī school. The reason is that the Abbāsid caliph Hārūn al-Rashīd ordered them to follow the method narrated by his ancestor, Sayyidunā ‘Abd Allāh ibn ‘Abbās رضي الله عنهما. Allāmah Ibn ‘Ābidīn رضي الله عنه writes:

قَالَ فِي الظَّاهِيرَةِ: وَهُوَ تَاوِيلُ مَا رُوِيَ عَنْ أَبِي يُوسُفِ وَمُحَمَّدِ، فَانْهَمَا فَعْلَا ذَلِكَ لَآنْ هَارُونَ أَمْرَهُمَا أَنْ يَكْبِرَا بِتَكْبِيرٍ جَدِّهِ فَفَعَلَا ذَلِكَ امْتِنَالاً لِهِ لَا مِذَهَبَاً وَلَا اعْتِقَادَ

‘He said in *al-Fatāwā al-Zāhiriyyah*, as has been mentioned: “The explanation for what has been related about Abū Yūsuf and Muhammad رضي الله عنهما, who did that because Hārūn al-Rashīd ordered them to perform the *Takbīrs* as his ancestor did. They did so in obedience to [the caliph]—not according to their *madhhab* or out of conviction [that it was correct].”²

1 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Aḥkām*, Hadith 7145; *Kitāb al-Maghāzi*, *Bāb sīryat ‘Abd Allāh ibn Hadhāfah*, Hadith 4340.

2 Ibn ‘Ābidīn, *Radd al-muhtār* (Beirut, 1412/1992) vol. 2, p. 172; *Bāb al-‘Idayn*.

However, all this applies only in case the ruler's orders pertain to permissible or *mujtahad fīh* matters. If he gives any order that does not comply with the generally accepted rulings of the Holy *Shari'ah*, the following rule becomes applicable: لا طاعة لمخلوق في معصية الخالق 'No obedience to creatures [is permissible that results] in disobedience of the Creator.' This principle is derived from the Holy Qur'an, from the *Āyah* in which Allah Most High commands us to be good to our parents.

وَإِنْ جَاهَكُوكُمْ عَلَى أَنْ تُشْرِكُوكُمْ بِِي مَا لَيْسَ لَكُوكُمْ بِِهِ عِلْمٌ فَلَا تُطِعُوهُمْ وَصَاحِبُهُمْ فِي الدُّنْيَا مَعْرُوفٌ

But if they force you to associate with Me what you know nothing of, do not obey them. But treat them well in this world. (31:15)

Additionally, the Messenger of Allah ﷺ said, concerning obedience to leaders:

السمع والطاعة على المرء المسلم فيما احب وكره، ما لم يأمر بمعصية، فاذا امر بمعصية فلا سمع ولا طاعة

'To hear and obey is compulsory for every Muslim, in all he likes or dislikes, as long as he is not commanded to disobey [Allah]. If he is ordered to disobey [Allah], he may not listen or obey.'¹

Any leader who commands his subjects to do acts of disobedience towards Allah ﷺ deserves to be removed from his post. How this is done will be discussed below, inshallah. The same applies if the *Shūrā* or parliament gives any such order, or passes any such law. This is why it was proposed above that there be a court of law through which any laws that compel people to perform acts of disobedience to Allah ﷺ can be repealed.

10. THE FREEDOM TO CENSURE

Obedience, however, does not mean that one cannot criticise or censure the leader at all. The opposite is true. In an authentic Islamic state, the

¹ al-Bukhārī, *Ṣaḥīḥ*, *Bāb al-Sama'* wa al-tā'ah lil-imām; Hadith 7144.

subjects are free to criticise their rulers, especially when any of their orders are found to be against the Holy Qur'an and the Sunnah, in which case such an order may even be repealed by the Court. The reason is that the Holy *Shari'ah* does not regard the ruler a supernatural being who is above making mistakes. This is also why the ruler has been ordered to consult others; and the purpose of consultation is to give people an opportunity to express their views without having to fear any consequences. The Messenger of Allah ﷺ enjoined on people that if they witnessed any wrong in their leaders they should try to rectify them rather than supporting them [through silent compliance or connivance]. Sayyidunā Ka'b ibn Ujarah ﷺ said:

خرج علينا رسول الله صلى الله عليه وسلم ونحن تسعه، فقال: انه ستكون بعدي امراء من صدقهم بكذبهم واعانهم علي ظلمهم. فليس مني ولست منه وليس بوارد علي الحوض ومن لم يصدقهم بكذبهم ولم يعنهم علي ظلمهم فهو مني وانا منه وهو وارد علي الحوض

'The Messenger of Allah ﷺ came out to us when nine of us were there, and he said: "After me there shall be rulers. Whoever corroborates them in their lies and aids them in their injustice does not belong to me, nor I to him, and he shall not drink at my Cistern. Whoever does not corroborate them in their lies or aid them in their injustice belongs to me, and I to him, and he shall drink at my Cistern."²

It is related from Abū Sa'īd al-Khudrī رضي الله عنه that the Messenger of Allah ﷺ said: ما بعث الله من نبي ولا استخلف من خليفة الا كانت له بطانتان بطانة تامرة بالمعروف وتحضه عليه وبطانة تامرة بالشر وتحضه عليه فالمعصوم من عصم الله تعالى.

'Allah does not send a Prophet or appoint a Caliph without them having two advisors. One advisor calls him to goodness and encourages him in it; the other advisor calls him to evil and encourages him in it. Only those whom Allah protects are truly safe.'²

It is related from 'Abd Allāh ibn 'Umar رضي الله عنه that the Messenger of Allah ﷺ said:

¹ al-Nasā'i, *Sunan*, *Kitāb al-Bay'ah*, *Dhikr al-wā'īd li-man a'āna amīran 'alā al-zulm*; Hadith 4212.

² al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Āḥkām*, *Bāb Baṭānat al-imām*, Hadith 7198.

However, all this applies only in case the ruler's orders pertain to permissible or *mujtahad fih* matters. If he gives any order that does not comply with the generally accepted rulings of the Holy *Shari'ah*, the following rule becomes applicable: 'No obedience to creatures [is permissible that results] in disobedience of the Creator.' This principle is derived from the Holy Qur'an, from the *Āyah* in which Allah Most High commands us to be good to our parents.

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Obedience, however, does not mean that one cannot criticise or censure the leader at all. The opposite is true. In an authentic Islamic state, the

¹ al-Bukhārī, *Ṣaḥīḥ*, *Bāb al-Sama'* wa al-ṭā'ah lil-imām; Hadith 7144.

subjects are free to criticise their rulers, especially when any of their orders are found to be against the Holy Qur'an and the Sunnah, in which case such an order may even be repealed by the Court. The reason is that the Holy *Shari'ah* does not regard the ruler a supernatural being who is above making mistakes. This is also why the ruler has been ordered to consult others; and the purpose of consultation is to give people an opportunity to express their views without having to fear any consequences. The Messenger of Allah ﷺ enjoined on people that if they witnessed any wrong in their leaders they should try to rectify them rather than supporting them [through silent compliance or connivance]. Sayyidunā Ka'b ibn Ujarah ﷺ said:

خرج علينا رسول الله صلى الله عليه وسلم ونحن تسعه، فقال: انه ستكون بعدي امراء من صدقهم بکذبهم واعانهم علي ظلمهم. فليس مني ولست منه وليس بوارد علي الحوض ومن لم يصدقهم بکذبهم ولم يعنهم علي ظلمهم فهو مني وانا منه وهو وارد علي الحوض

'The Messenger of Allah ﷺ came out to us when nine of us were there, and he said: "After me there shall be rulers. Whoever corroborates them in their lies and aids them in their injustice does not belong to me, nor I to him, and he shall not drink at my Cistern. Whoever does not corroborate them in their lies or aid them in their injustice belongs to me, and I to him, and he shall drink at my Cistern."¹

It is related from Abū Sa'īd al-Khudrī رضي الله عنه that the Messenger of Allah ﷺ said: ما بعث الله من نبي ولا استخلف من خليفة الا كانت له بطانتان بطانة تامره بالمعروف وتحضه عليه وبطانة تامره بالشر وتحضه عليه فالمعصوم من عصمه الله تعالى.

'Allah does not send a Prophet or appoint a Caliph without them having two advisors. One advisor calls him to goodness and encourages him in it; the other advisor calls him to evil and encourages him in it. Only those whom Allah protects are truly safe.'²

It is related from 'Abd Allāh ibn 'Umar رضي الله عنه that the Messenger of Allah ﷺ said:

¹ al-Nasā'i, *Sunan*, *Kitāb al-Bay'ah*, *Dhikr al-wā'id li-man a'āna amīran 'alā al-zulm*; Hadith 4212.

² al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Āḥkām*, *Bāb Baṭānat al-imām*, Hadith 7198.

من حضر اماماً فليقل خيراً او ليسك ، رواه الطبراني في الاوسط وفيه صالح بن
مهمد بن زياد وثقة احمد وغيره وضعيه جماعة وبقية رجال الصحيح.

'When someone is in the ruler's presence, he should either say what is
good or keep quiet.'

It is also related from *Abū Sa‘īd al-Khudrī* that the Messenger of Allah ﷺ said:

ان من اعظم الجهاد كلمة عدل عند سلطان جائز.

'One of the greatest [forms of] Jihad is a word of justice [spoken] in the
presence of a tyrannical ruler.'²²

It is related from *Sayyidunā ‘Abd Allāh ibn ‘Abbās* that the Messenger of Allah ﷺ said:

لا ينبغي لامرء يقوم مقاماً فيه مقال حق الا تكلم به فإنه لن يقدم اجله ولا يحرمه
رزقاً له.

'When a person finds himself in a position to speak up for what is right,
it is not befitting to fail to speak up, for [failing to] can neither hasten his
death nor deprive him of his provision.'²³

It is related from *Abū Sa‘īd al-Khudrī* that the Messenger of Allah ﷺ said:

لا يحررن احدكم نفسه، قالوا: وكيف يحرر نفسه؟ قال: ان يري امراً لله فيه مقالاً
فلا يقول به فيلقى الله تبارك وتعالي وقد اضاع ذلك فيقول: ما منعك؟ فيقول:
خشية الناس، فيقول: فاياي كنت احق ان تخشي.

'None of you should degrade himself.' [Those present] asked: 'And how
does one degrade oneself?' He replied: When someone sees something
about which he could speak for the sake of Allah but does not say it. Then
after wasting that [opportunity], he meets Allah (Blessed and Exalted is
He), who asks: 'What kept you [from speaking out]?' When he replies:
'Fear of people', Allah will tell him: But I was more deserving to be feared.'

1 *Majma‘ al-zawā‘id*, *Kitāb al-Khilāfah*, *Bāb al-kalām bi-al-ḥaqq ‘ind al-a‘imma*; Hadith 9167.

2 *al-Tirmidhī*, *Sunan*, *Kitāb al-Fitan*, Hadith 2174. Narrated with slight differences in wording in *Abū Dā‘ūd*, *Sunan*, *Kitāb al-Malāḥim*, Hadith 4344; and *Ibn Mājah*, *Sunan*, *Kitāb al-Fitan*, Hadith 4011.

3 *al-Bayhaqī*, *Shu‘ab al-īmān*, 52; Hadith 7579.

4 Related thus by *Abū Dāwūd al-Tayālīsī*, with a chain that is *sahīh*; by *Abū Ya‘lā al-Mawṣilī*.

In the light of these Hadiths it appears that the Rightly-Guided Caliphs
actually asked people for censure and criticism and welcomed such feed-
back! Immediately after *Sayyidunā Abū Bakr al-Ṣiddīq* was elected as
Caliph, he addressed the people in his first *Khutbah*:

يا ايها الناس فاني قد وليت عليكم ولست بخيركم، فان احستت فاعينونى وان
اسئت فقومونى، الصدق امانة، والكذب خيانة الضعيف منكم عندي قوى هنئ
ازبح علته ان شاء الله، والقوى فيكم ضعيف عندي حتى آخذ منه الحق ان شاء
الله، اطيعونى ما اطع الله ورسوله، فاذا عصيت الله ورسوله فلا طاعة لى عليكم.

'O people, I have been put in charge of you, although I am not at all the
best of you. So if I do good assist me, and if I do ill set me straight. Truth-
fulness is trustiness and falsehood is betrayal. The weak among you are
strong in my sight until I have alleviated what ails them, if Allah wills. The
strong among you is weak in my sight until I have taken what is due from
him, if Allah wills. Obey me as long as I obey Allah and His Messenger;
but if I disobey Allah and His Messenger, you are under no obligation to
obey me...²⁴

In this short address, *Sayyidunā Abū Bakr al-Ṣiddīq* described in a few
comprehensive words what role the leader plays in an Islamic state, and
what should be the attributes of such a state. And he instructed the people
to criticise and censure him, should the need arise. Every truly just ruler
after him would follow the same principle.

Sayyidunā ‘Umar once told the people:

فاني واحد كاحدكم وانتم اليوم تقررون بالحق خالفنى من خالفنى ووافقنى من
وافقنى ولست اريد ان تتبعوا هواي.

'I am just like any of you, and today you acknowledge what is right. Let
whoever may oppose me oppose me, and let whoever agrees with me
agree with me. But I do not want you to follow any caprice of mine.'²⁵

and from him by *Ibn Ḥibbān* in his *Ṣaḥīḥ*; also, in shortened form, by *Aḥmad ibn Manī‘*, *Abd ibn
Hamid*, and *Ibn Mājah*. See *Ithāf al-khiyarah al-maharah bi-zawā‘id al-Masānid al-‘asharah*, *Kitāb
al-Fitan*, *Bāb al-Amr bi-al-ma‘rūf wa al-nahy ‘an al-munkar*; Hadith 7402.

1 *Ibn Kathīr*, *al-Bidāyah wa al-nihāyah*, vol. 9, p. 414.

2 *Abū Yūsuf*, *Kitāb al-Kharāj*, *al-Fay’ wa al-kharāj*, p. 25.

Sayyidunā 'Umar ﷺ always welcomed constructive criticism of himself. Sayyidunā Hasan al-Baṣrī recounted that once someone said: 'Fear Allah, O 'Umar!' and that he kept saying that. When another person told him to stop, and that he had wronged the Caliph, Sayyidunā 'Umar told him:

دَعُهُ لَا خَيْرٌ فِيهِمْ أَنْ لَمْ يَقُولُوهَا لَنَا، وَلَا خَيْرٌ فِينَا أَنْ لَمْ نَقْبِلْ.

'Let him be. There would be no goodness in them if they did not say that to us, and no goodness in us if we did not accept [their admonitions].'

Similarly, Sayyidunā 'Umar ﷺ once cautioned the people during a *Khutbah* not to fix too high sums as dowry (*mahr*), and that if anyone gave a dowry higher than the Messenger of Allah ﷺ used to give his blessed wives, the excess amount would have to be made over to the *Bayt al-Māl*. After he had concluded his *Khutbah*, a Qurayshī woman got up and said: 'Commander of the Faithful, is the message of Allah's Book more truthful and worthy to be followed, or what you say?' Sayyidunā 'Umar ﷺ said: 'Of course the Book of Allah is more worthy to be followed. But what is the matter? Why do you ask?' That woman replied: 'Today you have forbidden people to give high amounts as dowry, although Allah Most High says in His Book: وَإِنْ يَنْهَا فَلَا تَخْذُنَوْهُنَّا مِنْهُ شَيْئًا "And if you have given any of them a talent [of gold, silver or money], do not take anything thereof" (4:20). Upon hearing this, Sayyidunā 'Umar ﷺ exclaimed: 'Everyone seems to have a better understanding of religion than 'Umar!' He then ascended the minbar and repealed the ordinance he had just given.²

It was Sayyidunā 'Umar ﷺ, again, who wanted to purchase the house of Sayyidunā 'Abbās ﷺ in order to annex [the site of] it during the expansion works on the Mosque of the Holy Prophet ﷺ in Madīnah. Sayyidunā 'Abbās, however, refused, and that gave rise to differences as to whether Sayyidunā 'Umar could indeed force Sayyidunā 'Abbās into selling his home so that the site could be annexed during the expansion of the mosque. These two luminaries asked Sayyidunā Ubayy ibn Ka'b ﷺ to settle their dispute. Ubayy then decided against 'Umar and in favour of 'Abbās. Later on, 'Abbās gave away this house for the noble cause of expanding the mosque, and did not take its price.³

¹ Abū Yūsuf, *Kitāb al-Kharāj*, p. 12.

² al-Bayhaqī, *al-Sunan al-kubrā* (Hyderabad, 1353/1934–35), vol. 7, p. 233.

³ Ibn Sa'd, *Tabaqāt*, vol. 6, p. 168; Ibn Sa'd, *Tabaqāt*, vol. 4, p. 19.

The house in question had a raised water conduit from which water used to spill onto the very path which Sayyidunā 'Umar ﷺ used to walk to the mosque. Once Sayyidunā 'Abbās ﷺ had slaughtered some chicks, and their blood fell through the conduit and onto Sayyidunā 'Umar, who was on his way to lead the Friday prayer, thus spoiling his clothes. Sayyidunā 'Umar went back to his home and changed his clothes, and he ordered that the conduit be removed. Sayyidunā 'Abbās objected, saying that the Messenger of Allah ﷺ himself had put the conduit there. Hearing this, Sayyidunā 'Umar grew anxious and said: 'For the sake of Allah, stand on my back and put the conduit back where it was.' And that is exactly what happened. Sayyidunā 'Abbās did step on Sayyidunā 'Umar's back and put the conduit back as it was before¹. This water conduit is preserved to this day in the western side of the Holy Prophet's ﷺ Mosque.

Such incidents were not limited to the Rightly-Guided Caliphs. Many later righteous rulers followed the excellent example that had been set for them. They listened to criticism with open and humble hearts and minds and accepted feedback from their subjects. History is full of incidents which prove this, the following being a handful of examples.

In the year 439 AH, the Caliph Jalāl al-Dawlah ordered that the appellation *Shāhanshāh-i A'zam, Malik al-Mulūk* ('Mightiest Monarch, King of Kings') be added to his name. During the Friday *Khutbah*, when his name was to be mentioned with these additions, some scholars protested, while others said that as long as it is a matter of comparison with other worldly rulers, one should not declare this title impermissible. One scholar, Abū al-Hasan al-Māwardī ﷺ was heavily opposed this title and declared it completely impermissible. He said that only Allah ﷺ can be referred to as *Shāhanshāh* or *Malik al-Mulūk*, and that no human being must be given a title like that. Jalāl al-Dawlah had good relations with al-Māwardī. When he got to know about the latter's fatwa, he called him and said: 'Keeping in view our relations, I know that if you would make a concession to anyone in this matter, you would make it to me. However, you did not. The fatwa you gave is completely based on religiousness. This is why you have risen even more in my estimation than before.'²

¹ Ibn Sa'd, *Tabaqāt*, vol. 4, pp. 18–19.

² al-Subkī, *Tabaqāt al-Shāfi'iyyat al-kubrā* (Cairo, 1964), vol. 5, p. 271; entry on 'Alī ibn Muhammād ibn Ḥabīb Abū al-Hasan al-Māwardī.

An even graver incident took place during the days of Shaykh 'Izz al-Dīn ibn 'Abd al-Salām. It was learnt that a number of Turkish viziers to the Mamlūk sultan were actually slaves who had gained their posts without having been emancipated by their owners; and that it was no longer known to whom they actually belonged. The Shaykh gave a fatwa that their considering themselves to be free was a violation of the Holy *Shari'ah*, that they were not entitled to retain their posts, and that in order to remedy the transgression they should be sold, the price paid for them being deposited in the *Bayt al-Māl*, and their buyers should then set them free. The Wazirs found it immensely difficult to put the Shaykh's proposal into practice. Even the Sultan was hesitant to accept the fatwa so, but in the end he did so. The Wazirs were sold at auction for a very high price, and the money was then deposited in the *Bayt al-Māl*.

11. THE DIFFERENCE BETWEEN CRITICISM AND CONTEMPT

While the public was not only allowed but encouraged to voice their criticism, they were also cautioned to distinguish between criticism and contempt. Criticism is not merely permissible but can be a source of reward; but contempt is forbidden. Once a person saw a certain Amīr ibn Amīr, who was attired rather inappropriately. He said: 'Look at our Amīr! He is dressed like a reprobate.' Abū Bakrah, a well-known Companion of the Holy Prophet, happened to be present. He said: 'Be quiet, for I heard the Messenger of Allah say:

من اهان سلطان الله في الأرض اهانه الله.

"Whoever shows contempt for Allah's ruler on earth, Allah will show contempt for him."¹

Imam Ahmad recorded this Tradition as follows:

من اكرم سلطان الله في الدنيا اكرمه الله يوم القيمة ومن اهان سلطان الله في الدنيا
اهانه الله يوم القيمة.

¹ al-Tirmidhī, *Sunan*, *Abwāb al-fitān*, Hadith 2224 (classed as *gharib*).

'Whoever honours Allah's ruler in this world, Allah shall honour him on the Day of Resurrection. Whoever belittles Allah's ruler in this world, Allah will belittle him on the Day of Resurrection.'²

There are some differences regarding the transmission chain of this Hadith. But since a great number of *Muhaddithūn* related this Hadith through different channels, the message contained in this Hadith, that it is not permissible to revile a ruler, seems to be firmly established. The reason is that the foremost motive in criticising someone should not be to debase him but a sincere desire to reform him. Such criticism is made solely to please Allah. It is not meant to degrade the person, or to give people an opportunity to show off their boldness or verbal acrobatics. Sayyidunā 'Iyād ibn Ghannām reported that the Messenger of Allah said:

من اراد ان ينصح لذى سلطان بامر فلا يدله علانية ولكن ليأخذ بيده فيخلو به فان قبل منه فذاك والا كان قد ادى الذى عليه.

'When one desires to counsel a person in authority, he should not do so in public. Instead, he should take him by his hand and talk to him privately. If he accepts the counsel, so be it; if not, he will have done what was due from him.'²

12. THE BAYT AL-MĀL IS A TRUST

In order to run a government one needs a treasury. The treasury of an Islamic state is called the *Bayt al-Māl* ('House of Wealth'). At time of the advent of Islam, the treasuries of different countries all over the world were fully controlled by the rulers. The ruler decided through which sources the treasury was to be filled. He could levy taxes of any rate he pleased, whenever he pleased. As for how the money that accrued was spent, in most cases he was not answerable to anyone. He could do whatever he wanted with it. In general, the ruler would consider the treasury his personal property, and much of it was spent on maintaining his lavish lifestyle.

¹ Ahmad ibn Hanbal, *Musnad*, vol. 34, p. 79; Hadith 20,433.

² Narrated by Imam Ahmad. *Majma' al-zawā'id*, *Kitāb al-Khilāfah*, *Bāb al-Naṣīḥah lil-a'īmmah wa kayfiyyatuhā*; Hadiths 9161, 9162.

It was Islam that laid down, for the first time, the principle that tax revenue is a trust that has been placed in the hands of the ruler for the people, and that it is his responsibility to spend it carefully and for no other purpose than the people's welfare. Islam provides a complete system that determines exactly from which sources the *Bayt al-Māl* can be replenished, and at what rates. This includes *Zakat*, '*Ushr*, *Kharāj*, *Jizyah*, spoils of war, *fay'* (spoils that fall into the Muslims' hands without fighting), *Luqat* (property found and not unclaimed), and so on. Furthermore, there are guidelines as to how these funds are to be spent; there are differences between the uses to which *Zakat* and '*Ushr*, and *Kharāj* and *Jizyah*, can be put. The honourable jurists have laid down these guidelines in the light of the Holy Qur'ān, the Sunnah and the ways of the Rightly Guided Caliphs. Both Imam Abū Yūsuf and Imam Yaḥyā ibn Ḥādī compiled works entitled *Kitāb al-Kharāj*, while Imam Abū 'Ubaydah Qāsim ibn Salām compiled a work entitled *Kitāb al-Amwāl*. These three books are the primary sources on the subject of how the funds of the *Bayt al-Māl* are to be spent.

Sayyidunā 'Umar al-Fārūq once said in a *Khuṭbah*:

أني لا أجد هذا المال يصلح إلا خلال ثلات: إن يوخذ بالحق، ويعطى في الحق
ويمنع من الباطل وإنما أنا ومالكم كولي اليتيم، إن استعنت استعفت وإن افتقرت
أكلت بالمعروف.

'I believe three things to be essential to deal with this wealth correctly: that it be rightfully procured, that it be rightfully spent, and that it be kept from [being spent on] wrongful purposes. I stand in your relation to your wealth as a guardian stands in relation to [that of] an orphan. If I am not in need, I shall refrain from using it; if I am in need, I shall take [only as much] as is justifiable.'¹

Ibn Sa'd quotes the following words from the same *Khuṭbah*:

ان ايسرت، قضيت.

'If my circumstances become easier, I shall repay [whatever I have taken from it].'²

1 Abū Yūsuf, *Kitāb al-Kharāj*, *Taqbīl al-sawād*, p. 117.

2 Ibn Sa'd, *Ṭabaqāt*, *Dhikr khilāfat 'Umar*, vol. 3, p. 256.

History abounds in shining examples of the piety and caution with which the Rightly Guided Caliphs demonstrated that the *Bayt al-Māl* was indeed a trust in their hands. Ibn Sa'd quotes 'Atā' ibn al-Ṣā'ib's account of how a salary came to be issued to the Caliph for his services:

لما استخلف ابو بكر، اصبح غاديا الى السوق، وعلى رقبته اثواب يتجر بها، فلقيه
عمر بن الخطاب وابو عبيدة بن الجراح، فقال له: اين تريد، يا خليفة رسول الله؟
قال: السوق: قالا: تصنع ماذا وقد وليت امر المسلمين؟ قال فمن اين اطعم
عيالي؟ قال له: انطلق حتى تفرض لك شيئا، فنطلق معهما ففرضوا له كل يوم
شطر شاة وما كسوه في الراس والبطن.

'When Abū Bakr was appointed as Caliph, he went to the market early the next morning, carrying some cloth on his shoulder to trade in [as before]. On his way] he met 'Umar 'To the market' he said. They asked: 'Whatever are you doing, when you have put in charge of the affairs of the Muslims?' He said: 'Then how am I to feed my family?' Both said: 'Come, we shall fix some [salary] for you.' He went with them, and it was then decided that he should have half a sheep per day and something to cover his head and his belly [i.e. housing and clothing].'¹

Thus Sayyidunā Abū Bakr used to receive his expenses from the *Bayt al-Māl*. Sayyidunā al-Ḥasan al-Baṣrī further mentioned that Sayyidunā Abū Bakr was reluctant to take anything from the *Bayt al-Māl*. He said:

وبح عمر اني اخاف ان لا يسعني ان آكل من هذا المال شيئا.

'Woe to you, 'Umar! I fear that it may not be lawful for me to use any of this wealth.'

Sayyidunā Ḥasan al-Baṣrī further relates:

فانفق في ستين وبعض اخرى ثمانية الاف درهم، فلما حضره الموت قال: قد
كنت قلت لعمر: اني اخاف ان لا يسعني ان آكل من هذا المال شيئا، فاذا مُت خذلوا
من مالي ثمانية آلاف درهم وردوها في بيت المال، فلما أُتي بها عمر قال: رحم
الله ابا بكر، لقد اتعب من بعده تعبا شديدا.

1 Ibn Sa'd, *Ṭabaqāt*, *Dhikr khilāfat Abī Bakr*, vol. 3, p. 168.

'In two years, and a part of the third year [the total duration of his *khilāfah*], [Abū Bakr] spent 8,000 dirhams. When he was close to death, he said: I have already told 'Umar that I fear that it may not be lawful for me to take anything from this wealth. So when I die, take 8000 dirhams from my estate and return it to the *Bayt al-Māl*.' When 'Umar brought [the money there], he exclaimed: 'May Allah have mercy on Abū Bakr! He has made it very trying indeed for those after him [to match his scrupulousness].'

Sayyidunā 'Umar رض ensured complete transparency concerning his use of funds from the *Bayt al-Māl*. He said:

ان اخبركم بما استحلّ منه، يحلّ لي حلتان، حلة في شتاء وحلة في القيظ، وما احتج عليه واعتبر من الظهر، وقوتي وقوّة اهلي كقوّة رجل من قريش ليس باغناهم ولا بافقرهم، ثم انا بعد رجل من المسلمين يصيّني ما اصابهم.

'I tell you what I consider lawful for myself [from the *Bayt al-Māl*]. Two robes are lawful for me, one for winter and one for the heat of summer; a mount to ride to perform Hajj and 'Umrah; and food for myself and my family like that of a man of Quraysh who is neither the richest nor the poorest of them. After that, I am just a common Muslim who gets whatever they get.'²

As if that was not enough, he was so concerned for the welfare of the Muslims that during the year of Ramadah, when there was a famine, he refrained from eating meat and clarified butter, and also stopped his children doing so. He would soak his bread in just a little oil, from which his stomach suffered. He used to tell his stomach: 'As long as the people are suffering from this famine, you shall not have anything else.'³

The Rightly-Guided Caliphs رض were indeed beacons of light; but that does not mean that a Caliph or ruler must not take more salary than their righteous predecessors used to take. The point to consider is that their salary should not be a burden on the *Bayt al-Māl* and should not be fixed higher to cover unnecessary expenses. It is related that the Messenger of Allah صل fixed an annual salary of 40 *awqiyahs* of silver for Sayyidunā 'Itāb ibn Usayd

¹ *Kanz al-'ummāl*, vol. 5, pp. 599–600; no. 14,062.

² Ibn Sa'd, *Tabaqāt*, *Dhikr istikhlāf 'Umar*; vol. 3, p. 256.

³ Ibn Sa'd, *Tabaqāt*, vol. 3, p. 292.

¹ Forty *awqiyahs* equal 1600 dirhams. This shows that the Holy *Shari'ah* has not fixed any specific sum as salary; it may be increased or decreased according to circumstances, provided that it is not spent on extravagances.

The injunction concerning taxes

The *Shari'ah* has laid down the sources from which the funds in the *Bayt al-Māl* are to be replenished: they are *Zakat*, *'Ushr*, *Kharāj*, *Jizyah*, *Fay'*, spoils of war, and unclaimed lost property. The Holy Law is precise and sensitive about the levying of further taxes. Under normal circumstances, it is considered a gross injustice to levy further taxes, and there are Hadiths which severely condemn extra taxation of this kind. If, however, the state finds itself in a situation where the revenue from the prescribed sources is not sufficient to fulfil the needs of the people, that is an exceptional case. When that happens, the jurists have stated that government is allowed to levy further taxes (which, as we have seen, are known as 'ضريبة النائبة' *daribat al-nā'ibah* or 'emergency levies'); but with extreme caution, and only to the extent that is absolutely unavoidable. But that can only apply when the rulers forgo their own lavish and extravagant lifestyle, and the taxes really are levied under the most pressing circumstances. And since it was possible that rulers might misuse this legal exception, the jurists had serious concerns about revealing its existence. Some of them held that this exception should not be made too public, lest any tyrant make use of it for his own unjust purposes. 'Allāmah Ibn 'Ābidīn رض said:

قال ابو جعفر البلاخي: ما يضرب السلطان علي الرعية مصلحة لهم يصير ديناً
واجباً وحقاً مستحقاً كالخرجان، وقال مشايخنا: وكل ما يضربه الامام عليهم
لمصلحة لهم فالجواب هكذا، حتى اجرة الحراسين لحفظ الطريق للصوص،
ونصب الدروب، وابواب السكك، وهذا يعرف ولا يُعرف خوف الفتنة، ثم قال:
فعلي هذا ما يؤخذ في خوارزم من العامة لاصلاح مسناة الجيرون او الريض
ونحوه من مصالح العامة دين واجب لا يجوز الامتناع عنه، وليس بظلم، ولكن
يعلم هذا الجواب للعمل به وكف اللسان عن السلطان وسعاته فيه، لا للتشهير
حتى يتجردوا في الزيادة على القدر المستحق

¹ al-Bayhaqī, *al-Sunan al-kubrā*, *Kitāb Qism al-fay'*; vol. 6, p. 355.

Abū Ja'far al-Balkhī ﷺ said that when the Sultan imposes a tax on his subject meant for their own benefit, it becomes like a debt or a due that must be paid, like the *Kharāj*. Our Shaykhs have said that the same applies if the Imam imposes a tax on his subjects that is intended for their benefit. This applies even to the cost of paying watchmen, building and repairing roads, and installing gates on roads: since there is apprehension of mischief, this regulation should not be made public. [Abū Ja'far] further said: 'According to this principle, the tax levied on the people of Khwārazm to pay for the strengthening of the banks of the River Oxus or the repair of the city walls, and similar projects for the public welfare, constitute a debt on them that they must pay and from which they must not shrink. This is not an injustice. However, this point is supposed to be acted upon by the Sultan and his staff, and to protect them from being vilified. It is to be preserved as a matter of [private] knowledge and not to be made public, lest rulers begin to dare to demand more than is actually required.'

After quoting this passage, 'Allāmah Ibn 'Ābidīn ﷺ states:

قلت: وينبغي تقييد ذلك بما اذا لم يوجد في بيت المال ما يكفي لذلك [رد المحتر،
كتاب الزكاة، قبل باب ا، مصرف ج ٣، ص ٣٣٦، ٣٣٧]

'I say that this [ruling] should be conditional upon sufficient [funds] not being available in the *Bayt al-Māl*'.¹

The Messenger of Allah ﷺ reportedly said:

لَا يدخل الجنة صاحب مكسٍ.

'A person of مكسٍ shall not enter Paradise'.²

The word 'مكسٍ' is usually translated as 'tax'. This is why it is sometimes thought that this Hadith declared all kinds of tax unlawful, including also those that 'Allāmah Ibn 'Ābidīn ﷺ refers to in the above passage. However, the jurists have interpreted the word 'مكسٍ' in different ways. Imam Abū 'Ubayd Qāsim ibn Sallām ﷺ, in explaining the term, states that:

1 Ibn 'Ābidīn, *Radd al-Muhtar*, vol. 3, pp. 336–337; *Kitāb al-Zakāh*.

2 Abū Dā'ūd, *Sunan*, *Kitāb al-Kharāj*, Hadith 2937.

كان له اصل في الجاهلية يفعله ملوك العرب والعمجم جميعاً فكانت سنته ان يأخذوا من التجار عشر اموالهم اذا مرروا بها عليهم.

'This originated in the Days of Ignorance, being practised by all rulers, Arab and non-Arab. It was their custom to take from merchants one-tenth of whatever assets they brought through their lands'.¹

Imam al-Ṭahāwī ﷺ explained the term as follows:

ان العشر الذي كان رسول الله صلى الله عليه وسلم رفعه عن المسلمين هو العشر الذي كان يؤخذ في الجاهلية

'The 'Ushr which the Noble Prophet ﷺ abolished for the Muslims was the 'Ushr that had been taken during the Days of Ignorance'.²

The heavy burden of taxes that the rulers during the Days of Ignorance levied on their subjects was meant to finance their own luxurious lifestyle, and that was indeed a great injustice. The taxes that governments levy nowadays without there being any particular need, which were referred to in the quotation from Ibn 'Ābidīn ﷺ are also an injustice. However, the latter also refers to the *darībat al-nā'ibah* which is meant to be used for the welfare of the public. This cannot be compared to the *maks* of the Days of Ignorance, which Islam prohibited.

Imam Ghazālī ﷺ discusses this issue at length. He denounces those rulers who levy taxes to pay for the extravagancies of their armed forces, adding:

فاما لو قدرنا اماماً مطاعاً مفترقاً الي تكثير الجنود لسد الثغور وحماية الملك
بعد اتساع رقعته وانبساط خطته وخلال بيت المال عن المال وارهقت حاجات
الجند الي ما يكفيهم، وخلت عن مقدار كفايتهم ايديهم فللامام ان يوظف علي
الاغنياء ما يراه كافياً لهم في الحال الي ان يظهر مال في بيت المال، ثم الي النظر
في توظيف ذلك علي وجوه الغلات والثمار كي لا يؤذى تخصيص بعض الناس
به الي ايغار الصدور وايحاش القلوب ويقع ذلك قليلاً من كثير لا يجحف بهم
ويحصل به الغرض.³

1 Abū 'Ubaydah, *Kitāb al-Amwāl*, vol. 2, p. 201; *Bāb al-'Āshir ṣāḥib al-maks*.

2 Sharh al-mā'āni li-āthār al-Ṭahāwī, vol. 2, p. 31; *Kitāb al-Zakāh, hal yakhudhuhā al-imām aw lā*.

3 al-Ghazālī, *Shifa' al-ghalil*, p. 113; *Rukn 1, Maslak 4*.

The gist of the above is that according to Imam Ghazālī as, there are some conditions that must be fulfilled before levying any tax of this kind. The Imam must be one who is to be obeyed, from the *Sharī'* point of view. It must be a real necessity for the defence of the state. There must be no funds available in the *Bayt al-Māl*. There should be no more taxes than really necessary, and that, too, only until there are again some funds in the *Bayt al-Māl*. The taxes should be levied justly. It should not happen that one group of people is groaning under the burden of taxes, while others are charged near nothing.

Since it is quite unlikely that these conditions are fulfilled as they ought to be, scholars have always discouraged the levying of additional taxes, although they have allowed it under truly pressing circumstances, and subject to very strict conditions. When the Mongols invaded Muslim lands, and the ruler needed money to cover the expenses of the war, he wanted to take a loan from the traders, and impose some tax as well. For this purpose, he called a meeting with the *Qādīs* and other scholars of Islam. At that time Shaykh 'Izz al-Dīn Ibn 'Abd al-Sallām as was the foremost scholar. He addressed the Sultan and said: 'When the enemy invades the country, it becomes an obligation for all Muslims to fight, and for you it is permissible to take as much money from your subjects as you need for Jihad. However, the condition to be fulfilled is that there be no funds in the *Bayt al-Māl*, that you have sold your gilded plaques and tasteful vessels, and that every soldier in the force content himself with his own mount and weapons, and that they be (as regards their possessions) just like the common people. But if the troops have sophisticated equipment, and still they demand money from the people, this shall not be permissible.'¹

It also happened during the days of the Mongol invasion that the Mamluk Sultan, al-Zāhir Baybars, intended to take some money from his subjects for reinforcements to counter the enemy. The scholars granted him permission to do so in view of the circumstances, but 'Allāmah Nawawī as said: 'I know that you were the slave of Amīr Banduqar, and that you had no possessions at all, but then Allah swt favoured you and made you a king. I have heard that you have one thousand slaves, and that each of those

¹ Jamāl al-Dīn Yūsuf al-Zāhirī, *al-Nujūm al-zāhirah*, vol. 7, pp. 72–73; al-Subkī, *Tabaqāt al-Shāfi'iyyah*, vol. 8, p. 215.

slaves has a golden plaque; and that you have two hundred slave-girls, and that each of them has a heap of jewellery. Now, if you spend all that, when your slaves no longer have those golden plaques and just simple clothes made from camel hair, and when your slave-girls have nothing but their clothes—when they no longer have their jewellery, then I shall give you a Fatwa that you may take money from your subjects.'²

To sum up, in case of real necessity, it is in principle permissible to levy taxes according to the need. Imām al-Haramayn 'Allāmah al-Juwaynī discussed this matter in several sections of his treatise *al-Ghiyāthī*. He even went so far as to say that if the *Bayt al-Māl* stands permanently in need of funds, such taxes can be levied on a permanent basis, too.³

But the scholars have always had the concern that this permissibility in principle might be misused. Misuse of public funds is rampant in many countries today. The public treasury is plundered without remorse. Much of the national assets is used to finance the rulers' profligate lifestyle. There are countless expenses that are neither justifiable nor permissible. The costs of purposeless conferences and futile foreign visits are astronomical. The costs of the rulers' palatial buildings are unlimited. And with intense regret it has to be said that many rulers of Muslim countries far outdo their non-Muslim counterparts when it comes to misusing public money. If corruption and wastefulness no longer burdened the public purse, there would be a considerable reduction in the taxes the people had to pay.

However, it can also not be denied that this modern age has created many unavoidable expenses that cannot be described as extravagant but are necessary to maintain the state's dignified existence. Imam Ghazālī as said about his own times already that the funds acquired from the *Khums* (the fifth part due on the spoils of war) and *Fay'* were not sufficient to cover the cost of Jihad.³

Modern governments have to render many services that were not due from governments in the olden days, such as providing people with electricity and gas (where these concerns remain nationalised). Then there are departments that also existed in the past, but whose cost was once a fraction of what it is now. For example, the government must provide modern

¹ Jalāl al-Dīn al-Suyūtī, *Husn al-muḥādarah*, vol. 2, p. 105.

² al-Juwaynī, *Ghiyāth al-umam fi tayyārat al-żulam*, pp. 256–286.

³ Abū Ḥāmid al-Ghazālī, *Shifā' al-ghalil*, p. 113.

arms for the defence of the country; it must build asphalted roads; and it must provide modern means of telecommunication and media, education, health, etc. All these certainly require a lot of money, for sure, and most of these expenses cannot be covered from Zakat or 'Ushr revenue. Hence, even if the rampant wastefulness were eliminated, the funds from the *Bayt al-Māl* alone would barely suffice to cover all these expenses, because, once the Zakat and 'Ushr have been taken out (since they cannot be used for the above-mentioned purposes), there would remain only *Kharāj*, *Jizyah*, *Fay'*, and the spoils of war. How much *Kharāj* is available depends on how much of the land is classified as *Kharājī* (i.e. liable to *Kharāj* taxation), and in an Islamic state most land is *'Ushri* (i.e. liable to 'Ushr). The revenue from *Jizyah* is so low that it would not really constitute much of an income. *Fay'* and spoils of war are the result of Jihad, and the cost of modern warfare is so high that even the victor is sometimes bankrupted. Hence, if a true Islamic government came into being it would require emergency taxation at least in the initial phase. But if one really observed the limits set by caution and piety, and cut out all kinds of wastefulness, the taxes would be very low. And if one followed Allah's ﷺ commands as they ought to be followed, then one might expect blessings beyond calculation and reckoning. The Holy Qur'an tells us:

رَأَوْا أَنَّ أَهْلَ الْقُرْبَىٰ آمَنُوا وَأَتَقَوْا لَفَتَحْنَا عَلَيْهِمْ بَرَكَاتٍ مِّنَ السَّمَاءِ وَالْأَرْضِ

And had the people in the settlements had faith and had *taqwā*, We would have opened up blessings for them from the heavens and the earth. (7:96)

13. THE RIGHTS OF NON-MUSLIM MINORITIES

Islamic forms of government are under attack today, with propaganda alleging that in an Islamic state the rights of non-Muslims are not protected. However, this claim is baseless. It is true that Islam is a call to the world to accept Allah ﷺ without associating anything with Him. But this call means that people should accept Islam in the light of the arguments through which it proves its veracity, not through forcible conversion. The Holy Qur'an makes this very clear:

لَا إِكْرَاهٌ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيْرِ فَمَن يَكْفُرُ بِالظَّاغُوتِ وَيُؤْمِنُ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ

There is no compulsion in matters of religion. Guidance has been made distinct from error. So whoever disbelieves in *Tāghūt*¹ and believes in Allah has grasped a firm stronghold. (2:256)

One cannot force a non-Muslim to accept Islam. There are no instances in history where an Islamic state exercised such compulsion. There was an instance in which a person in authority threatened some people into accepting Islam. Once proof of coercion had been presented to the *Qādī*, he ruled that the people concerned were permitted to revert to their former faith and practise it as they used to. Consequently, most of them returned to their former religion.²

When non-Muslim individuals express their loyalty and become citizens of the Islamic state, it will be the responsibility of the Islamic government to protect their lives, possession and honour. Their civic rights are equal to those of Muslim citizens. It is difficult to find a parallel in other religions for the way an authentically Islamic state protects the rights of non-Muslim minorities. In Islamic terminology, such a non-Muslim citizen is called a *Dhimmī* or *Mu'āhid*. *Mu'āhid* means someone with whom one has a binding pact. Non-Muslim citizens have an agreement with the government of the Islamic state that they shall live in peace, just like Muslim citizens. A *Dhimmī* is someone for the protection of whose life, property and honour another party, in this case the government, takes full responsibility.

Below are some of the Noble Prophet's ﷺ sayings in this regard:

الا من ظلم معاهدا او انتقصه او كلفه فوق طاقته او اخذ منه شيئاً غير طيب نفس
فانا حجيجه يوم القيمة.

'Whoever wrongs a *Mu'āhid*, disgraces him, burdens him beyond his strength, or takes anything from him without his consent, I shall plead on [the victim's] behalf on the Day of Resurrection.'³

¹ Meaning all false deities and ideologies.

² Ibn Kathir, *al-Bidāyah wa al-nihāyah*, vol. 17, p. 578; events of the year 680 AH.

³ Abū Dāwūd, *Sunan*, Hadith 3052.

من قتل معاهداً في غير كنه حرم الله عليه الجنة.

'Allah has forbidden Paradise to anyone who kills a *Mu'āhid* without just cause.'¹

من قتل معاهداً لم يرح رائحة الجنة وإن رائحتها يوجد من مسيرة أربعين عاماً.

'Whoever kills a *Mu'āhid* shall not even catch a scent of the fragrance of Paradise, although its fragrance can be smelt from a distance of forty years' travel.'²

One of the best documents concerning non-Muslims' rights is the letter that Sayyidunā 'Umar رض sent to the Christians of Bayt al-Maqdis (Jerusalem), in which he wrote:

بسم الله الرحمن الرحيم، هذا ما أعطي عبد الله عمر أمير المؤمنين أهل إيليا من الأمان، اعطاهم أماناً لأنفسهم وأموالهم ولكنائسهم وصلبانهم سقيمها ويرئها وسائل ملتها: انه لا تسكن كنائسهم ولا تهدم ولا تنتقص منها ولا من حيزها ولا من صليبيهم ولا من شيء من اموالهم ولا يكره علي دينهم ولا يضار أحد منهم.

'In the name of Allah, the All-Merciful, the Compassionate. Here is what the servant of Allah, 'Umar, the Commander of the Faithful, has granted the people in ՚Ilyā [Aelia, the Romans' name for Jerusalem] by way of immunity. He has granted them the safety of their lives, properties, churches, and crosses, irrespective of their condition; and [the same for] every member of their nation. Their churches shall not be turned into residences or demolished. Nothing shall be reduced or taken from them, their equipment, or their crosses. They shall not be coerced in matters of religion, and not one of them shall be harmed.'³

Sayyidunā 'Umar رض himself was personally concerned for the well-being of non-Muslims. Once he asked a delegation from Basrah whether the non-Muslims living there were suffering in any way. The members of that

delegation said: 'No. So far as we know, the non-Muslims there are given their rights.'⁴

Once 'Umar رض passed by an aged Jew who was begging. 'Umar took him by the hand, brought him to his home, and gave him something from his personal possessions. Then he told those in charge of the *Bayt al-Māl*: 'Look out for people like this one! By Allah, if we were to eat his youth (i.e. benefit from him in his young days) and leave him helpless in old age, that would not be fair.' He then stopped taking *Jizyah* from the elderly, and ordered that they be given a stipend from the *Bayt al-Māl*.²

A few days before his martyrdom, Sayyidunā 'Umar رض left instructions for whoever was to succeed him, amongst which was the following:

أوصيكم يذمة الله وذمة رسول الله صلى الله عليه وسلم ان يوفي لهم بعهدهم،
وان يقاتل من ورائهم ولا يكلفو الا طاقتهم.

'I instruct you with regard to the responsibility (towards non-Muslims) that came from Allah and the Messenger of Allah صلی اللہ علیہ وسالم, that he should abide by the pact with them, that he fight on their behalf, and that he not impose on them beyond their means.'³

Sayyidunā Khālid ibn Walīd رض said:

لا تمشي ثلات خطى لتامر على ثلاثة ولا ترزا معاهداً ابرة فما فوقها.
'Do not even walk even three steps to become commander of three men (do not make the least effort to gain responsibility for even a tiny group), and do not cause as much as the loss of a needle to any *Mu'āhid*'.⁴

Sayyidunā Sa'sa'ah رض related: I told Sayyidunā 'Abd Allāh ibn 'Abbās رض: 'Sometimes we pass by non-Muslim settlements and take some trifling things from there.' 'Abd Allāh ibn 'Abbās رض asked: 'Do you do that without paying the price for them?' Sayyidunā Sa'sa'ah said: 'We thought that would be permissible, and that there was no harm in doing so.' Ibn 'Abbās رض replied: 'You are saying what the People of the Book used to say: ليس علينا سيل ("the Gentiles have no rights against us").'

1 Abū Dāwūd, *Sunan*, *Kitāb al-Jihād*, *Bāb fī al-wafā' wa al-mu'āhadah*; Hadith 2760.

2 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Jihād*, *Bāb Ithm man qatala mu'āhidan*; Hadith 3166; related by 'Amr ibn al-'Āṣ رض.

3 al-Ṭabarī, *Tārīkh al-rusul wa al-mulūk*, vol. 3, p. 609; events of the year 15 AH.

1 al-Ṭabarī, *Tārīkh*, vol. 4, p. 89.

2 Abū Yūsuf, *Kitāb al-Kharāj*, p. 259.

3 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Manāqib*; Hadith 3700.

4 Abu 'Ubaydah, *Kitāb al-Amwāl*, vol. 1, p. 38; no. 15.

In the light of the instructions from the Holy Qur'ān and the Sunnah, as well as the practice of the Rightly-Guided Caliphs, the question of non-Muslims' rights was much discussed by jurists. They declared it to be the Muslims' duty to safeguard the rights of non-Muslims. Imam Muhammad ibn al-Hasan Shaybānī said:

لأن المسلمين حين أطعوهن الذمة فقد التزموا دفع الظلم عنهم وهم صاروا من
أهل دار السلام

'For once the Muslims have assumed responsibility (*dhimmah*) for them, they have undertaken to protect them against oppression, and they became citizens of Dār al-Salām' (i.e. the Islamic state). The honourable jurists even went so far as to say that if it saddens them to be addressed as 'infidel', then it will be a sin to address them so. According to *al-Fatāwā al-Ālamgīriyyah*:

لوقال ليهودي او مجوسي: يا كافر، يأثم ان يشق عليه

'If one were to say to a Jew or Zoroastrian "O infidel", one is sinning, if he dislikes it.'¹

The jurists hold that wronging a non-Muslim citizen is a more serious offence than wronging a Muslim, because once he has died there is no hope of acquiring pardon from him [whereas with a Muslim one may atone by making *du'ā* for the deceased and by performing meritorious actions and donating the reward to the deceased].²

The reality of the Jizyah

It is true that the Islamic state imposes a tax, the *Jizyah*, on its non-Muslim citizens, which leads some western thinkers and writers to object that an Islamic state discriminates against its non-Muslim citizens by imposing a tax on them that is not imposed on the Muslims. But if one examines this with an unbiased mind, there are no grounds on which to object. It is in fact a benefit for the non-Muslims. The reason is that the state receives *Zakat* from its Muslim citizens, whereas non-Muslims are exempted from paying

¹ *Fatāwī-i 'Ālamgīrī*, vol. 5, p. 348; *Kitāb al-Hażar wa al-ibāḥah*, Bāb 4.

² Abū Layth, *al-Nawāzil al-fiqhiyyah*, p. 207.

it. *Zakat* is rated at 2.5% and '*Ushr*' at 10% of taxable assets, and these figures are certainly higher than that of *Jizyah*. Furthermore, the Islamic government not only takes responsibility for protecting the lives and property of its non-Muslim citizens but also supports indigent and poor non-Muslims from the funds in the *Bayt al-Мāl*, as we saw in the passage from *Kitāb al-Kharāj* quoted above, where Sayyidunā 'Umar رض ordered that a stipend be given to an aged Jew whom the Caliph saw begging in the street.

Another important point in this connection is that if the Islamic state is attacked by non-Muslim forces, the Caliph may if necessary order all Muslim citizens to participate in the war; but he cannot order his non-Muslim subjects to do so. Rather, it is the Muslims' duty to defend their non-Muslim fellow-citizens. The instructions that Sayyidunā 'Umar رض left for his successor, as quoted earlier, state: 'وَان يقاتل من ورائهم'—and that he should fight for them.' This is what it apparently means. 'Allāmah 'Alūsī رحمه الله quoted a statement according to which one purpose of *Jizyah* is to exempt non-Muslims from having to defend the Islamic state¹. The noble Companions رض used to act upon this, and one radiant example for this lies in the days when the Syrian city of Homs was under Muslim rule. In this city there lived many Jews and Christians, who paid the *Jizyah* for protection and other services. Sayyidunā Abū 'Ubaydah ibn Jarrāh رض was the governor of Homs. Suddenly news came that the Heraclius, the Byzantine Emperor, had sent a huge army to attack the city. The number of Muslims there was not sufficient to defend Homs effectively, and there was not enough time to ask for reinforcements. After some consultation, Abū 'Ubaydah رض decided that the Muslims should move to another place until reinforcements arrived. Since only non-Muslims would remain in the undefended city, Abū 'Ubaydah رض ordered that the *Jizyah* they had paid should be returned to them. They were told:

قد شغلنا عن نصرتكم والدفع عنكم فانتم على امركم.

'We are not in a position to aid or defend you, so you may settle your affairs as you please.'²

This freedom to settle affairs as they pleased meant that they could even

¹ al-Ālūsī, *Rūh al-ma'ānī*, vol. 10, p. 382; *Tafsīr Sūrat al-Tawbah*, Āyah 29.

² al-Balādhūrī, *Futūh al-buldān* (Beirut, 1983), p. 142.

open the city gates for Heraclius and his army. The historian al-'Azdi reported these words:

وأنما ردنا إليكم أموالكم أنا كرهنا ان نأخذ أموالكم ولا نمنع بلادكم ولكننا نتحمّي
إلي بعض الأرض ونبعث إلي إخواننا فيقدموا علينا ثم نلقي عدوّنا فنقاتلهم فان
اظفرنا الله وفينا لكم بعهدكم الا ان لا تطلبوا ذلك.

'We have returned your wealth because we do not like to take your wealth when we cannot defend your lands. However, we are going to another place, we shall send a message to our brethren that they may come to our help. Then we shall meet our enemy and fight them. If Allah grants us victory, we shall fulfil our pact with you, unless you do not ask for that.'

According to al-'Azdi, the non-Muslims replied:

لولا يكم وعد لكم احب اليانا مما كانا فيه من الظلم والغشم

'Your government and your justice are more liked by us than the injustice and tyranny [that we were suffering before].'

The *Jizyah* that is taken from the non-Muslims in exchange for all these services is a very nominal amount compared to the *Zakat*. The maximum amount of *Jizyah* payable was forty-eight dirhams per year, and women, children, the old and the poor were exempted from this payment. This is a trifling amount compared with the *Zakat* that is paid by Muslims.

Non-Muslim citizens are granted the same civic rights as Muslims. They are even entitled to an allowance from the *Bayt al-Māl*, if they are in need, and are exempted from defending the country. The amount they pay as *Jizyah* is much less than the *Zakat* paid by Muslims. Is it fair, then, to describe the *Jizyah* as an injustice? Some unbiased non-Muslim writers have acknowledged that it is not. Montesquieu, a well-known name in political science, was named at the onset of our discussion as one of the founders of modern democracy. He writes:

'It was the excess of taxes that occasioned the prodigious facility with which the Mohometans carried on their conquests. Instead of a continual series of extortions devised by the subtle avarice of the Greek emperors, the people were subjected to a simple tribute which was paid and collected with ease.'

¹ Ahmad 'Ādil Kamāl, *al-Tariq ilā Dimishq*, p. 410; al-Azdi, *Tārikh futūh al-Shām*, p. 155.

Thus, they were far happier obeying a barbarous nation than a corrupt government in which they suffered every inconvenience of lost liberty.¹

The author has, in the above excerpt, referred to the Muslims as a barbarous nation—as many western authors are prone to. This is a reflection of the bias and prejudice that have clouded their minds. Yet in spite of this attitude, he had no choice but to acknowledge that the *Jizyah* which an Islamic government takes from its non-Muslim subjects is but a simple payment of tribute; that the non-Muslims had no difficulty in paying it; and that it was nothing compared to the wholesale robbery committed by their former rulers in the name of taxes and tribute. He further points out that the non-Muslims felt safer under the Muslims' rule, and that this was one reason that facilitated the expansion of Muslim territory.

Some Traditions indicate that the *Jizyah* may also be collected under another name. When Sayyidunā 'Umar wanted the Christians of Banī Tughlab to pay the *Jizyah*, they said that they would not pay *Jizyah*, but that they would pay *Şadaqah* similar to that paid by the Muslims. Sayyidunā 'Umar said that *Şadaqah* was a duty peculiar to Muslims. In reply, the Christians said that they would pay double the amount, but insisted that it be called *Şadaqah*. Sayyidunā 'Umar replied: 'Call it what you will, it will still be *Jizyah*.'²

There is another Tradition concerning Jablah ibn Ayham al-Ghassānī, a Christian chief. Sayyidunā 'Umar offered him to let him live in Dār al-Salām as a non-Muslim citizen, provided he paid the *Jizyah*. He replied: 'I shall not pay the *Jizyah*, but I shall pay *Şadaqah*.' At first 'Umar did not consent, and Jablah went to Byzantine territory. 'Umar later regretted his decision. Sayyidunā 'Ubādah ibn al-Samit told him: 'Had you accepted his proposal he would have been pleased—and he might have embraced Islam.' When, later on, Sayyidunā 'Umar dispatched an army to the lands of the Byzantines under the leadership of Sayyidunā 'Umayr ibn Sa'īd al-Anṣārī, he said to him: 'Treat Jablah ibn Ayham leniently, and remind him of the ties of kinship.' According to the historian al-Balādhurī, Sayyidunā 'Umar said:

¹ Montesquieu: *The Spirit of Laws*, Book 13, Chapter 16; *Great Books*, vol. 35, p. 100.

² Ibn al-Humām, *Fath al-Qadir*, (Dār al-fikr n.d.) vol. 6, p. 64, *kitāb al-siyar, bāb al-jizyah, faṣl naṣārā banī tagħlib; Abū 'Ubaydah, Kitāb al-Amwāl, Bāb Akhdh al-jizyah*.

ويدعوه إلى بلاد الإسلام على أن يؤدي ما كان بذل من الصدقة ويقيم على دينه.

'And invite him to return to the land of Islam on condition that he shall pay *Ṣadaqah* while continuing to follow his own religion.'¹

If this tradition is authentic, then one can conclude that the Banū Tughlab were not given any preferential treatment, and that others too may be treated in the same manner, if that is in the interest of the Muslims. Some jurists have contended that this goes against the rules of *Qiyās*, and that hence it is not permissible to take the *Jizyah* as *Ṣadaqah* from other non-Muslims.² But this pertains to taking the *Jizyah* as 'Ṣadaqah' or 'Zakat', or any other form of payment that is peculiar to Muslims. If it is taken under any name that is not peculiar to Muslims, this rule apparently does not apply. And verily Allah knows best. Imam al-Shāfi'i روى that under extraordinary circumstances one may make an agreement with non-Muslims without taking from them.³

14. MINISTRIES (WIZĀRĀT) AND DEPARTMENTS

As we have already seen, Islam has not laid down any fixed rules as to how the government is to be run, whether there should be viziers (ministers) and, if so, how many, how much authority they should have, what kind of ministries and departments should be set up, and so on. It has been left to the thinkers of each age to settle these matters in the manner most beneficial for the people. However, in almost every historical period ministers were appointed to advise the Caliph and assist him in the performance of his duties. Sayyidunā Mūsā روى himself asked Allah Most High for support in this form:

واعلِي وزيرًا من أهلي هارون أخي

'And appoint for me a vizier from my family: Hārūn, my brother.'(20:29-30)

According to some Traditions, a number of Companions of the Noble

1 al-Balādhurī, *Futūh al-buldān*, (Beirut 1988 *Dār wa maktabah al-Hilāl*) p. 138.

2 *Kashf al-asrār 'alā Uṣūl al-Bazdāwī*, *Bāb Ma'rifat aqsām al-asbāb*, vol. 4, p. 201.

3 al-Shāfi'i, *Kitāb al-Umm*, *Kitāb al-Jihād wa al-Jizyah*, *Bāb al-Sughar ma' al-Jizyah*, vol. 5, p. 416.

Prophet were referred to as his viziers. For example, Sayyidunā 'Abd Allāh ibn Mas'ūd روى said:

فاختار له أصحابه فجعلهم انصار دينه ووزراء نبيه.

'And He chose Companions for him (the Noble Prophet ﷺ) and made them helpers of His religion and viziers to His Prophet.'¹

This does not mean, however, that those blessed souls were formally appointed to the post of vizier or minister. Rather, the Companions were the Noble Prophet's روى assistants, and as such, in an informal way his ministers. It is related that the Messenger of Allah ﷺ said:

فاما وزيري من أهل الأرض فابو بكر وعمر.

'My two viziers among the residents of the Earth are Abū Bakr and 'Umar.'²

It is not proven that there was any formal appointment to the post of minister during the days of the Righteous Caliphate, but there were several Companions who assisted the Caliph in his duties and carried out the tasks assigned to them, and who were called viziers. When the people approached Sayyidunā 'Alī روى to assume the caliphate, he said:

ان اكون وزيراً خيراً من ان اكون اميراً.

'It is better for me to be a vizier than an Amīr.'³

In later times it became common to make formal appointments to ministerial posts in a similar manner to the formal appointment to the post of Caliph. According to experts on Islamic politics, there are two categories of viziers: *Wazīr al-tafwīd*, and *Wazīr al-tanfīdh*.

Wazīr al-tafwīd and Wazīr al-tanfīdh

A *Wazīr al-tafwīd* is a kind of vizier who has been invested with some kind of authority by the Caliph and who is able to make his own decisions within the limit of his authority. He will not need to have his decisions approved by the Caliph. A *Wazīr al-tanfīdh* is a kind of vizier who has

1 al-Baghawī, *Sharh al-Sunnah* (Beirut ed.), vol. 1, p. 214.

2 al-Tirmidhī, *al-Jāmi'* (*al-Sunan*), *Kitāb al-Manāqib*, Hadith 3680.

3 al-Tabārī, *Tārīkh*, vol. 4, p. 427.

not been invested with authority, but who is responsible for ensuring the implementation of the Caliph's orders.

Authorities on Islamic governance, such as al-Māwardi and Abū Ya'la mentioned these two categories of vizier. The history of Islam provides examples for both kinds. Ibn Khaldūn voiced the opinion that a person who manages to make a positive impression on the caliph is appointed as *Wazīr al-tafwīd*. In other words, a person whose conduct convinces the caliph that his views and decisions are reliable becomes a *Wazīr al-tafwīd*. In modern times, the role of a *Wazīr al-tafwīd* can be compared to that of a Prime Minister, who is practically in charge of government affairs; however, the Caliph back then still had the right to revoke any of the vizier's ordinances and to implement another.

These two kinds of ministries are not based on textual evidence from the Holy Qur'an and the Sunnah. They are a product of changing times. Hence it is not a *Shari'ah* requirement to appoint either kind of ministers. The basic idea here is simply that the Caliph has the right to pass some or all of his authority over to another person. He may make use of this right, or he may choose not to. The appointment of ministers is an administrative matter regarding which the Holy *Shari'ah* has imposed no binding rulings. Provided that the basic principles of running an Islamic government are not compromised on, the Caliph may adopt any means of facilitating administrative matters.

Nowadays it is commonly thought advisable that the authorities and limitations of the different ministries be defined by law, and the same applies to government departments. The Holy *Shari'ah* has not imposed any restrictions on their number or functions. Throughout history, departments were established or abolished as needed, and this can also be done today.

15. PROVINCIAL AUTONOMY

An important issue that modern governments need to address is that of provincial autonomy, which frequently a bone of contention. It is appropriate to mention here some basic principles concerning this question. As we have already seen, Islam has not laid down any definite instructions whether the government should be unilateral or federal. Either method can be adopted,

according to the needs of the times. As we have also explained, the concept of a state founded on nationalistic ideology is foreign to Islam. Provincial or regional autonomy is not against the teachings of Islam, provided that certain conditions are fulfilled. Whether the governmental structure be unilateral or federal, in any but the smallest of nation-states administrative considerations will make it almost unavoidable to divide the territory into a number of provinces or units. Already during the days of the Holy Prophet ﷺ, administrative units of this kind came into being. After the Conquest of Makkah, the Holy Prophet ﷺ appointed Sayyidunā 'Utbah ibn Usayd as *Hākim* or governor of that region. After Bahrayn (which then denoted not what is today called Bahrain, but part of the coastline of the Arabian Peninsula) became part of the Islamic state, Sayyidunā 'Alā' ibn Hadramī was appointed as its governor. After its annexation, Yemen had to be divided into two administrative units because of its size and the difficulty of communications there. These units were called *Makhlāfs*. According to a Tradition narrated by Sayyidunā Abū Burdah:

بعث رسول الله صلى الله عليه وسلم ابا موسى و معاذًا إلى اليمن. قال و يبعث كل واحد منهما علىٰ مخلاف، قال: وكان اليمن مخلافان.

'The Messenger of Allah ﷺ sent Abū Mūsā and Mu'ādh to Yemen. He sent each of them to a *Makhlāf*, and Yemen consisted of two *Makhlāfs*.¹

Ibn Hajar ﷺ explains that in Yemen *Makhlāf* was used as the equivalent to the term used elsewhere, *Iqlīm*.²

Allāmah Badr al-Dīn al-'Aynī ﷺ stated that one of the two *Makhlāfs* comprised the upper parts of Yemen, which included Najūd, and that Sayyidunā Mu'ādh ibn Jabal ﷺ was the governor of that area; and that the other *Makhlāf* comprised the lower region of Yemen, which included Tahaym, etc., and that Sayyidunā Abū Mūsā al-Ash'arī ﷺ was governor of that area³. In the region around Aden, which was part of the governorate of Sayyidunā Mu'ādh ﷺ there is a town called Jund in which there is a mosque which was built by him.⁴

1 al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Maghāzi*, *Bāb* 61, Hadith 3431.

2 Ibn Hajar al-'Asqalānī, *Hady al-sārī*, *muqaddimat Fath al-Bārī*, vol. 1, p. 186; *Faṣl* 5.

3 al-'Aynī, *'Umdat al-Qārī* (N.p., n.d.), vol. 24, p. 251; *Kitāb al-Aḥkām*, *Bāb* 22.

4 Ibn Hajar, *Fath al-Bārī*, *Kitāb al-Maghāzi*, vol. 8, p. 61.

Similarly, during the days of the Righteous Caliphate, as the domain of the Islamic state expanded to include almost half of the known world, it became essential to establish further administrative units, and to appoint a *hākim* or governor to look after each of them.

Now, obviously the authority of these units had to be limited in a certain way. It had to be laid down which matters these units could decide independently, and in which matters they needed to seek the Caliph's approval. Here one must keep in mind that a government, whether central or federal, is required first and foremost to follow the Holy Qur'an and the Sunnah. This restriction applies to both kinds of government without distinction. No provincial government can be permitted to draft any law or take any measure that is not in conformity with the Qur'an and the Sunnah. This entails also that a provincial government should not have the right to draft any law or take any measure that is not in accordance with the universal principles of justice and equality. In matters of education, the central as well as the provincial government must adhere strictly to the teachings of Islam.

There are also certain matters in which national unity requires uniform policies throughout the country. These policies, such as those relating to international relations, foreign affairs, defence, and international trade, can be decided in consultation with all the administrative units. As long as these basic principles are regarded, different administrative units can be given quite a high level of autonomy.

Scholars of Islamic politics state that there are two kinds of *Hākim* (governor or provincial administrator): those who enjoy *al-Tafwid al-khāss*, meaning a limited degree of autonomy; and those who enjoy *al-Tafwid al-‘āmm*, a much higher degree of autonomy.

In *al-Tafwid al-‘āmm*, the ruler transferred almost all of his authority to his local representative¹. Especially during the ‘Abbāsid era, the concept of provincial autonomy took on an unprecedentedly wide meaning. The Caliph gradually transferred much of his authority to his local governors, who generally speaking were almost entirely free to rule as they wished in their respective areas. Experts on Islamic politics refer to such rulers as *Amīr* and defined two categories of *Amīr* in this sense of the word: firstly *Amīr al-istikfā'*, and secondly *Amīr al-Istilā'*.

¹ al-Māwardī, *al-Aḥkām al-sultāniyyah*, p. 40; Ibn Jamā'ah, *Tahrīr al-ahkām*, p. 60.

An *Amīr al-istikfā'* is a governor or *Hākim* whom the Caliph himself has appointed and has invested with almost unlimited authority to rule the city or region for which he is responsible as he sees fit. This kind of *Amīr* was even given the authority to call for Jihad.

An *Amīr al-Istilā'*, on the other hand, is a governor or *Hākim* who was not appointed by the Caliph but came to power (*istilā'*) in a particular region by his own efforts and initiative, and who later wished to be symbolically declared the *Amīr* of that region, as he considered it to be in his own interest to be affiliated with the Caliphate. Since this *Amīr* was a Muslim, he would enforce the *Sharī'i* injunctions in his region and the Caliph would endorse this affiliation. Sometimes the person in question did not have all the required attributes, and yet he was affiliated in order to maintain the political unity of the Muslims. However, in this case, the Caliph would appoint a deputy to the *Amīr al-Istilā'*, who would do his best to ensure that the *Amīr* continued to act in the interest of the Caliphate. In the beginning, this kind of *Imārah* (Emirate) was the exception rather than the rule, but in time they began to increase in number. ‘Allāmah Māwardī wrote the following as part of his description of the ‘Umarā’ *al-tafwid* (*Umarā'* being the plural of *Amīr*) of his age:

اذا فرض الخليفة تدبير الاقاليم الى ولايتها، ووكل النظر فيها الى مسؤولين عليها،
كالذى عليه اهل زماننا.

... When the Caliph puts the administration and oversight of these provinces in the care of the governors who have come to power there, as is common in our time...¹

The rulers of the Tāhirid, Ṣaffārid, Sāmānid, Ghaznawid, Būyid, Seljuk, and other dynasties in Iran, Afghanistan and western Central Asia generally fall into this category. This is a kind of emergency solution to the caliphate problem, and cannot be considered as 'exemplary' under any circumstances.

The fact that a caliph might entrust to the ‘Umarā’ *al-Istikfā'* such momentous responsibilities as calling for Jihad shows that Islam has very flexible principles regarding provincial autonomy. Provinces can be given a very high level of autonomy if that is what the times require.

¹ al-Māwardī, *al-Aḥkām al-sultāniyyah*, p. 38; see also Ḏiyā’ al-Dīn al-Rayyis, *al-Naṣariyyāt al-siyāsiyyat al-Islāmiyyah*, p. 278.

In Pakistan, the demand for provincial autonomy has become mixed up with nationalist agendas. As a result, more often than not, the demand for greater autonomy is labelled and treated as rebellion. But this is an absurd accusation. There are many examples of nations that have even granted their administrative divisions the right to print their own currency. Another important aspect of autonomy is that a province that produces a certain resource should have the greatest right to utilise that resource. However, there are many instances where a province produces a resource—the federal government benefits from it, and the province itself remains deprived of any of the benefits accruing to the government treasury from the resource. In Pakistan, for example, SUI Gas is produced in Baluchistan. This natural gas is used in Karachi, Lahore, and Islamabad, and in many parts of the country, and yet the people of Baluchistan themselves remained deprived of it for a very long time. Even Quetta, the provincial capital, has only recently (as of 2016) begun to receive gas supplies. The result of this injustice was that the people of Baluchistan began to demand autonomy. This demand then mutated into an independence movement based on purely nationalistic motives.

To sum up: if provinces and regional units of a country were to be given the maximum possible degree of autonomy in administrative matters, which is something that people in many countries are struggling for at the time of writing (in late 2017), this step would not be merely tolerable from the viewpoint of the Holy *Shari‘ah* but might help in overcoming regional prejudices and become a powerful means of reinforcing national unity; and that, in turn, might make many other things easy for the government.

CHAPTER FIVE

DEFENCE AND FOREIGN AFFAIRS

This chapter deals with the kind of relations that an Islamic state should or can have with another state. Before discussing this issue, it is appropriate to mention that Islamic jurisprudence uses two terms concerning different areas of the world. One is *Dār al-Salām* and the other is *Dār al-Harb* or *Dār al-Kufr*. What exactly do these terms mean?

Dār al-Salām and Dār al-Harb

Dār al-Salām is a region that is in Muslim hands and over which the Muslims have full control, in the sense that they are free to enforce the commands of the Holy *Shari‘ah*. ‘Allāmah Sarakhsī رحمه الله defined it as follows:

فإن دار السلام اسم للموضع الذي يكون تحت يد المسلمين

‘*Dār al-Salām* is the name for places that are under [the authority of] the Muslims.’¹

Another treatise, *Jāmi‘ al-rumūz*, quotes the following definition from *al-Kāfi*:

دار الاسلام ما يجري فيه حكم امام المسلمين وكانوا فيه آمنين

‘*Dār al-Salam* is a place where the writ of the Imam of the Muslims applies, and where the Muslims are [living] in security.’²

Once the Muslims are in control of a place, the result should be that all rules and regulations of that country are consonant with the Holy *Shari‘ah*; but if the Muslim leaders fail to implement the Holy *Shari‘ah* owing to

¹ al-Sarakhsī, *Sharḥ al-Siyar al-kabīr*, vol. 4, p. 86; *Bāb* 127.

² al-Quhistānī, *Jāmi‘ al-rumūz*, vol. 4, p. 556.

their own negligence or lack of knowledge, such a place is still considered to be *Dār al-Salām*, since authority over that place rests in Muslim hands. The statement in *Jāmi' al-rumūz*, quoted above, that *Dār al-Salām* is a place where the orders of Muslims' leader apply has led some people to suppose that this refers to an implementation of all *Shari'ah* rulings and injunctions, and that a place which is under Muslim authority without full implementation of the *Shari'ah* does not qualify as *Dār al-Salām* the place is fully under Muslim authority and the Muslims are fully at liberty to implement their laws. If they fail to implement them, out of negligence for example, they are committing a major sin and are obliged to implement all the rulings of the *Shari'ah* as soon as possible. All the same, such negligence does not result in their country no longer being *Dār al-Salām*. As we have seen, 'Allāmah al-Sarakhsī *✉* defined *Dār al-Salām* simply as a territory that is under Muslim authority. This has been interpreted in *Jāmi' al-rumūz* as meaning a place where the orders of the Muslims' leader apply—that is, where his laws are implemented—whether or not they are in accordance with the *Shari'ah*. Since in those days it was quite inconceivable that Islamic laws would not be implemented in a country that was under Muslim rule, it was not clearly stated whether a country which does not fully implement the *Shari'ah* despite being under Muslim authority can be called *Dār al-Salām*. It was sufficient to say that a country under Muslim rule, where the Muslims can implement their laws, is *Dār al-Salām*. In later times, however, the negligence of the Muslim rulers increased so greatly that even when a country was under Muslim authority, the Holy Law often was not implemented there. Jurists had to explain the ruling concerning this situation as well. Ibn 'Ābidīn *✉* says:

وَبِهَذَا ظَهَرَ أَنَّ مَا فِي الشَّامِ مِنْ جَبَلِ الدَّرُوزِ وَبَعْضِ الْبَلَادِ
الْتَّابِعَةِ لِهِ كُلُّهَا دَارُ اسْلَامٍ لَأَنَّهَا وَانْ كَانَتْ لَهَا حُكْمَانِ دَرُوزٍ أَوْ نَصَارَىٰ وَلَهُمْ قَضَاءٌ
عَلَىٰ دِينِهِمْ وَبَعْضُهُمْ يُعْلَمُونَ بِشَتْمِ الْإِسْلَامِ وَالْمُسْلِمِينَ وَلَكُنُّهُمْ تَحْتَ حُكْمِ وَلَا
أَمْرُنَا وَبِلَادِ الْإِسْلَامِ مُحِيطَةٌ بِبِلَادِهِمْ مِنْ كُلِّ جَانِبٍ وَإِذَا أَرَادُ وَلَىٰ الْأَمْرِ تَنْفِيذَ
حُكْمَانِهِمْ نَفْذَهَا،

'From this it is apparent that the region of Greater Syria (*al-Shām*) known as *Jabal Tīm Allāh* or *Jabal al-Durūz*, and some surrounding areas, are

all *Dār al-Salām*. For although there are Druze and Christian governors and judges there, who judge according to their religion, and some who openly abuse Islam and Muslims, it is still under our governance and is surrounded on all sides by Muslim lands; and [because] if a ruler intends to enforce our laws on them, he may do so.'¹

This shows that what determines whether a place is *Dār al-Salām* is whether it is fully in Muslim hands and under Muslim authority. If the Muslims have full authority over the place it will be called *Dār al-Salām*, even if the *Shari'ah* is not fully implemented there owing to the Muslims' negligence, and it will be treated in all respects as *Dār al-Salām*.

Similarly, a place will be called *Dār al-Harb* or *Dār al-Kufr* if it is under the authority of non-Muslims and their ordinances are implemented there:

وَدَارُ الْحَرْبِ مَا يَجْرِي فِيهِ اِمْرُ رَئِيسِ الْكَافِرِينَ

'And *Dār al-Harb* is a place where the orders of the infidels' leader apply.'²

A place will be considered as *Dār al-Harb* when the non-Muslims have full authority over it, even though they may have permitted the Muslims to set up their own courts or other symbols of their religious affiliation. The mere permission to live and judge according to Muslim principles does not make the place *Dār al-Salām*. The reason for this is that the final authority rests after all with the non-Muslims. They can withdraw their permission whenever they please. This is why Shah 'Abd al-'Azīz Muḥaddith Dihlawī and Mawlānā Rashīd Ahmad Gangohī *✉* stated that India was *Dār al-Harb* under British rule, and that although the Muslims had permission to offer the *Jumu'ah* and *Eid* prayers, and to live their lives according to Islamic values.³

Two types of *Dār al-Kufr*

The fact that certain jurists have referred to *Dār al-Kufr* as *Dār al-Harb* has given rise to the false impression that the residents of *Dār al-Salām* must be continuously at war with the residents of a place which is under

¹ Ibn 'Ābidīn, *Radd al-muhtar*, vol. 12, p. 12; *Kitāb al-Jihād, faṣl fi istimnān al-kāfir*, qabil bāb al-'ushr wa al-kharāj.

² Al-Quhistānī *Jāmi' al-rumūz*, vol. 4, p. 556.

³ See Mawlānā Gangohī's booklet (in Urdu) *Kiyā Hindustān Dār al-Harb hay?*

non-Muslim control. This misunderstanding comes from the word *Harb*, which means 'war'. However, jurists more commonly do the opposite, calling *Dār al-Harb* by the name of *Dār al-Kufr* (not vice-versa), and this term applies also to states that are not in conflict with the Muslims, with whom the Muslims may have a treaty of peace, and in which Muslims live in peace and security. From this one may conclude that there are actually two types of *Dār al-Kufr*:

Dār al-Harb: A state or region with which the residents of *Dār al-Salām* do not have a peace treaty, and where the Muslims are not permitted to practice their religion.

Dār al-Amān: A state or region where Muslims enjoy the freedom to live and practice their religion, although the place is under non-Muslim control. Abyssinia was an example in the early days of Islamic history. Since the Muslims suffered so much at the hands of the infidels in their hometown of Makkah, the Holy Prophet ﷺ permitted some of them to migrate to Abyssinia. Although that land was also under non-Muslim rule and hence *Dār al-Kufr*, since the Muslims were permitted to practice their religion there, it was also *Dār al-Amān*. Shaykh 'Abd al-Haqq Muḥaddith Dīhlawī ﷺ writes:

'In Islam there are two kinds of *Hijrah*. One is when a person leaves a place of [danger and] fear and moves to a place of security. This is what some of the Holy Prophet's ﷺ Companions did during the early days of Islam, when they migrated to Abyssinia to gain safety from persecution by the pagans of Makkah, and again later on, when some of the Companions went to Madīnah before it became an Islamic state. The second kind is when one leaves *Dār al-Kufr* and settles in *Dār al-Salām*. This second kind of *Hijrah* began to take place after the Holy Prophet ﷺ himself migrated to Madīnah and established his authority there.'¹

Shah 'Abd al-Haqq ﷺ also stated that there are two categories of *Dār al-Kufr*, or *Dār al-Harb*. One kind he termed a 'place of fear', the other a 'place of security.' When Mawlānā Gangohī ﷺ referred to India as *Dār al-Harb*, Mawlānā Sahūl 'Usmānī ﷺ elucidated this statement in a separate article

¹ 'Abd al-Haqq Dīhlawī, *Ashī'at al-lāma'āt*, vol. 1, p. 35, under the Hadith 'Actions are purely according to intentions': اعمال بالنيات.

which was then printed in Mawlānā Gangohī's booklet. This is what the article says:

'It seems to be necessary to point out that although today's India—apart from the Islamic states—has been called '*Dār al-Harb*' by Mawlānā Mujīb, Shāh 'Abd al-'Azīz and some other elders ﷺ, it ought nevertheless to be considered *Dār al-Amān*, as can be concluded from different incidents. This means that India is also to be considered *Dār al-Amān*, just as Abyssinia, before the *Hijrah*, was *Dār al-Amān* in spite of its being *Dār al-Harb*. That is the reason why it is not obligatory for the Muslims to migrate from here. When the writer of these lines inquired of Mawlānā Gangohī whether that was the case, he conceded that it was so; and this humble servant still remembers very well how he did so.'

Relations with other countries

From this can be concluded that countries are of three kinds: *Dār al-Salām*, *Dār al-Amān*, and *Dār al-Khawf*. The last-mentioned ought to be referred to as *Dār al-Harb* from the linguistic point of view. We shall consider in detail the kinds of relations that should be maintained with those countries which belong to these three categories.

Relations with Muslim countries

Ideally, as we have already seen, there should be only one *Dār al-Salām*, a single unitary Islamic nation state, in the world. In reality, however, there are at present more than fifty Muslim nation states. There should be an effort to unite them all into a single Islamic state, as this is precisely what the unity of the Islamic world requires. Hence it is the duty of every Muslim country to make it a matter of foremost importance in their foreign policies that all Muslim nations should be united, like pearls on a string. Allah Most High has granted Muslim countries a number of distinctive features that He has not given to others. Look at any map of the world and one will see that there is a group of lands with largely Muslim populations which form a chain extending from Morocco to Indonesia. From the geographic point of view, they are situated at the centre of the world. Some of the most important sea routes and straits are in Muslim hands, such as the Bosphorus, the Suez Canal, the Gulf of Aden, and the Strait of Hormuz. Many of the

world's major oil reserves are found in Muslim lands. The world's Muslim population is higher, and its material assets are greater, than ever before in history. But an immense part of this wealth, amounting to billions of dollars, is deposited in American and European banks, America and Europe gain much of the benefit from these deposits. It is a tragic irony that Muslim states should have to beg America and Europe for interest-bearing loans to fulfil their basic needs despite all their wealth. Hence not only is it a religious requirement that the Muslims should unite, but this step would also serve their social, economical and military interests. Were they to realise the need for this and act accordingly, the Muslims could rise to become an economic and military superpower in the world.

However, at present there is good reason to apprehend that any practical steps taken in this direction would result in bloodshed on a horrifying scale. Until and unless the rulers are guided to realise the need to unite their states for the sake of the greater good of Islam—or, at least to form a kind of federation, there is no other choice but to acknowledge the different independent governments. And since each of these countries may be described as being to some extent under Muslim authority (though merely having a Muslim name and posing as a pious man does not make the despotic rulers of certain countries into Muslim rulers) they fall under the definition of *Dār al-Salām*. At the very least, for the time being, an atmosphere of mutual cooperation ought to prevail among all the Muslim countries.¹

A basic point in any Muslim country's foreign policy ought to be to maintain warm, brotherly relations with other Muslim countries. This

¹ There are regions where the situation is more complex, including those with large Muslim minorities (such as India) and many countries in Europe, Asia, Africa, the Americas, and Australasia. Questions arise as to how these minorities are faring; what should be their stance in the light of the rulings of the Qur'an, Sunnah and fiqh rulings; and should they adopt some or all of the compromises advocated by the protagonists of the new 'jurisprudence of minorities' (*fiqh al-aqalliyāt*)? Some contemporary experts would argue that political union between Muslim, or Muslim-majority, or quasi-Muslim, countries is impossible in existing circumstances, and indeed that the modern nation-state is simply incompatible with normative Islam (and, indeed other traditional religions). That leads to the question: What alternatives are there? On the other hand, inasmuch as authentic Hadiths predict tumultuous and transformative events in 'The Last Days' (*Āakhir al-zamān*), for believing Muslims it is axiomatic that Allah ﷺ has the power to revolutionise the socio-political condition of the world at any moment—and that it is only a matter of time before these predicted changes come to pass and the Muslims find themselves under the rule of the divinely guided Imam al-Mahdi. See for example *Twilight of a World*, Dr. Mostafa Badawi's study of *Ashrāt al-Sā'a* (the events of the Last Days).

includes extending appropriate means of defence, and not just verbal or moral support, if any non-Muslim power attacks a Muslim country. The Holy Qur'an, the Sunnah and *Fiqh* are very explicit in this regard. The Qur'an states:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالْتَّقْوَىٰ ۝ وَلَا تَعَاوَنُوا عَلَىِ الْإِثْمِ وَالْعُدُوانِ

Aid one another in righteousness and *taqwā*, and do not aid one another in sin and enmity. (5:2)

انما المؤمنون اخوة

The believers are indeed brethren. (49:10)

The Messenger of Allah ﷺ said:

الMuslim اخو المسلم لا يظلمه ولا يسلمه

'A Muslim is the brother of [any] Muslim. He must not wrong him or leave him helpless.'²

ان المؤمن للمؤمن كالبنيان يشد بعضه ببعض

'The believers are like (the bricks in) a building, one reinforcing the other.'³

ترى المؤمنين في تراحمهم وتوادهم وتعاطفهم كمثل الجسد اذا اشتكى عضوا
تداعى له سائر جسده بالسهر والحمى

'You can see the believers in their mutual compassion, love and affection as resembling a single body. When one organ suffers pain, the rest of the body reacts with restlessness and fever.'³

This is why the honourable jurists say that when a Muslim city is attacked by non-Muslim forces, and its citizens are not strong enough to counter that attack, it is the duty of those in the nearest Muslim city to aid their brethren. 'Allāmah Ibn Nujaym رحمه الله states:

وفرض عين ان هجم العدو فتخرج المرأة والعبد بلا اذن زوجها وسيدة، والمراد
هجومه على بلدة معينة من بلاد المسلمين، فيجب على جميع اهل تلك البلدة،

¹ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Mazālim*; Hadith 2442.

² al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Ṣalāh*; Hadith 481.

³ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Adab*; Hadith 6011.

وكذا من من يقرب من يقرب، ان لم يكن باهلها كفاية، وكذا من يقرب من يقرب كفاية، او تكاسدوا وعصوا، وهكذا الى ان يجب على جميع اهل الاسلام شرقا وغرباً

'If the enemy attacks, Jihad will become *Fard 'ayn*. [Even] a woman and a slave will have to go forth to fight, without need of permission from their husband or master ... 'Attack' means the enemy attacking a particular Muslim city. Jihad is then obligatory for everyone in that city. And if its population is not sufficient, it becomes collectively obligatory on those [Muslims] living nearest to it. If these too are not sufficient, or if they are lazy and disobey [orders], the duty shall rest with those cities that are closest. The same applies to all Muslims, East and West.'¹

Relations with non-Muslim governments

Before we discuss how relations between Muslim and non-Muslim governments should be, one must understand that there is a world of difference between what Muslims and non-Muslims consider as the purposes of life. For a Muslim individual or government, the foremost purpose of life is to obey Allah ﷺ and to exist in service to Him, which is not possible without acknowledging and believing in His unity, and believing in the Prophets, especially the Final Prophet, Sayyidunā Muhammad ﷺ. A person or government that does not believe in the unity of Allah ﷺ, or in the Prophethood of Sayyidunā Muhammad ﷺ, will have some other purpose in life. A true Muslim will never maintain the same intense cordial relations and friendships with a non-Muslim as he would with a person who shares his outlook on life. In fact, the Holy Qur'an forbids Muslims to maintain this kind of friendship with non-Muslims:

لَا يَتَّخِذُ الْمُؤْمِنُونَ أَوْلَيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ ۚ وَمَنْ يَفْعَلْ ذَلِكَ فَلَيْسَ
مِنَ اللَّهِ فِي شَيْءٍ

The believers are not to take infidels as friends rather than the Muslims. Whoever does so, Allah has nothing to do with him. (3:28)

¹ Ibn Nujaym, *al-Bahr al-rā'iq*, Kitāb al-Siyar, vol. 5, p. 123.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَى أَوْلَيَاءَ بَعْضُهُمُ أَوْلَيَاءُ بَعْضٍ وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ

O you who believe, do not take the Jews and the Christians as friends. They are friends to each other. And whoever befriends them from among you is [like one] of them. (5:51)

لَا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادِونَ مَنْ حَادَ اللَّهَ وَرَسُولَهُ وَلَوْ كَانُوا
آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْرَانَهُمْ أَوْ عَشِيرَتَهُمْ

You will not find a people who believe in Allah and in the Last Day befrinding those who oppose Allah and the Messenger, even if they be their fathers, sons, brothers, or clansmen. (58:22)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا عَدُوِّي وَعَدُوَّكُمْ أَوْلَيَاءَ تُلْقُونَ إِلَيْهِم بِالْمُوَدَّةِ وَقَدْ
كَفَرُوا بِمَا جَاءَكُمْ مِنَ الْحَقِّ يُخْرِجُونَ الرَّسُولَ وَإِيَّاكُمْ أَنْ تُؤْمِنُوا بِاللَّهِ رَبِّكُمْ

O you who believe, do not take My enemy and your enemy as friends, showing affection for them, when they have disbelieved in the Truth that has come to you. They have banished the Messenger, and you too, because you believe in Allah, your Lord. (60:1)

In commenting upon this Āyah, Mawlānā Muftī Muḥammad Shafī' Usmānī cast light on the different kinds of relations that Muslims should maintain with non-Muslims. His concise but comprehensive commentary deserves to be quoted here:

'This subject, i.e. that of stopping the Muslims from forming intimate and intense friendships with the non-Muslims, is found in brief or in detail in many Āyāt of the Holy Qur'an. Not being fully aware of the circumstances, some ill-informed non-Muslims are led to conclude that these Āyāt are meant to forbid the Muslims from having any kind of warm relations with non-Muslims, or even to meet them with a cordial disposition. In fact, however, there are many Āyāt, and also sayings and actions of the Noble Prophet ﷺ, the Rightly Guided Caliphs, and other luminaries among the Companions ﷺ, that enjoin and approve of good and sympathetic treatment of people following other confessions; these are hardly matched by any other

nation of the world. A superficial glance at these *Āyāt* and narrations might even lead a Muslim to believe that there exists a contradiction of sorts in the teachings of the Holy Qur'ān and the Sunnah. However, this is a misconception that results from not having studied these sources in depth, and from being content with an inadequate investigation. Were one to gather all the *Āyāt* that deal with this topic and reflect on them, there would remain nothing for non-Muslims to complain about, nor would there be any kind of discrepancy. To achieve this, we shall analyse the passages dealing with this topic and point out the differences between and true nature of cooperation, kindness and sympathy. It is hoped that this will help towards understanding what is permissible in this regard, and what is not.

There are different degrees in the relations between two individuals or two groups. The first degree, known as *Muwālāt*, entails deep and heartfelt feelings of love, belongingness and attachment. Such feelings are to be reserved for the believers. It is not permissible under any circumstances to entertain such feelings for non-believers.

The second degree, called *Muwāsāt*, entails a general warm attitude that does not necessarily stem from deep feelings. It includes sympathy, well-wishing, and trying to be of benefit to others. This is permissible towards all non-Muslims, except for any non-believers who reside in *Dār al-Harb* and are constantly bent on harming the Muslims. As the Qur'ān states:

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّنْ دِيَارِكُمْ أَنْ تَرْهُوْهُمْ وَتَقْسِطُوا إِلَيْهِمْ

Allah does not forbid you, with those who have not fought you in matters of religion or driven you from your homes, to show them kindness and deal with them justly. (60:8)

The third degree is known as *Mudārāt* and entails kind, amicable behaviour. This is permissible towards all kinds of non-Muslims, if the intention is to benefit them in matters of religion [i.e. to make them incline towards the true religion], or to fulfil the duty of a host [towards a non-Muslim guest], or to ward off any kind of ill and harm. The above-cited *Āyah* from Sūrat Āl 'Imrān adds: 'اَلَا اَن تَتَقَوَّمُ مِنْهُمْ تَفْهَمْ' 'unless you [do so to] guard yourselves against them.' That means that it is not permissible to engage in *Muwālāt*

with infidels, unless it be done to ward off harm they might otherwise cause. *Mudārāt* is exempted, since it does not appear to be very different from *Muwālāt* [apart from the heartfelt attachment which the latter entails].

The fourth degree is *Mu'amalāt*, meaning transactions such as commerce, employment, leasing, and industry. Such transactions can be concluded with non-Muslims as well, provided that they do not harm the Muslims in general. The Holy Prophet's ﷺ actions, as well as those of the rightly guided Caliphs and other Companions ﷺ bear witness to that. On this basis, the honourable jurists have ruled that it is impermissible to sell arms to infidels, but that other kinds of commercial transactions and suchlike may be conducted with them. It is permissible to give them employment, or to work for them in factories, offices, etc.

The above discussion shows that heartfelt attachment, love and affection towards non-Muslims are impermissible but one may show a warm, sympathetic and supportive attitude towards non-Muslims in general, provided they are not actively hostile residents of *Dār al-Harb*; and that good behaviour in general is desirable if one intends to benefit them in religious matters.¹

To sum up: apart from deep feelings of love and attachment, which would in effect annul any difference regarding the views a Muslim and a non-Muslim have towards the purpose of life, one may have all kinds of warm relations with non-Muslims, for example, truces, agreements of peace, sympathy on humanitarian grounds, friendliness, cooperation for human welfare, etc. This has been declared not only permissible, but in many instances desirable. It seems hence appropriate to cite some *Āyāt* from the Holy Qur'ān as well as examples from the life of the Holy Prophet ﷺ as well as the noble Companions ﷺ to demonstrate the point.

Different kinds of agreement and abiding by them

First and foremost, the Holy Qur'ān tells us:

وَإِن جَنَحُوا لِلصَّلْمِ فَاجْنِحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ

And if they incline to peace, incline you also to it; and put your trust in Allah. (8:61)

¹ Muhammad Shafi 'Usmānī, *Ma'ārif al-Qur'ān*, Sūrat Āl 'Imrān, vol. 2, pp. 50-51.

Once a treaty or agreement is made, it must be fulfilled in all earnest:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُهُودِ

O you who believe, fulfil your undertakings. (5:1)

وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ أَنْ صَدُوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا

And let not your loathing for a people who prevented you from reaching the Holy Mosque induce you to transgress. (5:2)

If one has come to terms with a people but fears for some reason that they may violate the agreement, the Qur'an enjoins the believers to annul that agreement openly and unambiguously, but not to break any clause of it until it is formally cancelled.

وَإِمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ إِنَّ اللَّهَ لَا يُحِبُّ الْخَابِرِينَ

But if you fear treachery from a people, cast back to them [their treaty] fairly. Truly Allah does not love the treacherous. (8:58)

There are many examples to show how meticulously the Messenger of Allah ﷺ and the Companions رضي الله عنهما observed this command. Authentic Hadiths relate that Sayyidunā Hudhayfah ibn Yaman and his father رضي الله عنهما left their home to present themselves to the Noble Prophet ﷺ at the time when people were preparing for the Battle of Badr. Abū Jahl was all set to attack Madīnah Munawwarah. His army stopped Hudhayfah and his father on their way, and forced them to promise that they would not fight alongside the Holy Prophet ﷺ. Only after they had made that promise were they allowed to continue their journey. When they came to the Messenger of Allah ﷺ they told him what had happened. Since they had been forced to make the promise, and had not made it of their own accord, they asked him رضي الله عنهما to let them fight. However, the Messenger of Allah ﷺ refused, telling them:

انصر فاني لهم بعهدهم ونستعين لله عليهم

'Go back. We shall keep our pact with them, and we shall ask Allah to help us against them.'¹

¹ Muslim, *Sahīh*, *Bāb al-Wafā' bi-al-'ahd*; Hadith 4603.

Just imagine! The Battle of Badr was the first battle fought for Islam. It was to be a decisive encounter between truth and falsehood. Those believers who participated in it are regarded with unmatched honour and respect by all Muslims. On that occasion every fighter, every form of assistance, was immensely valuable, because the odds stood at three to one. Three hundred and thirteen poorly equipped Muslims were to face a heavily armed army of one thousand. Furthermore, Sayyidunā Hudhayfah and his father رضي الله عنهما had not given that promise willingly but at the point of the sword. It could easily be said that a promise made under such circumstances was no promise at all. However, Allah's truthful Messenger ﷺ did not resort to such interpretations. Instead, he clearly said that he would not allow not even such a doubtful promise to be broken. In this way he set a shining example for the *Ummah* that a Muslim must avoid anything that even slightly resembles a breach of promise.

Similarly, in Abū Dā'ūd there is a Tradition with an authentic chain of transmission, narrating another telling incident. When Abū Rāfi' رضي الله عنهما was still an unbeliever, the pagans of Makkah sent him as messenger to the Noble Prophet ﷺ. He himself related that as he presented himself to the Messenger of Allah ﷺ Islam took root in his heart. He said: 'Messenger of Allah ﷺ, I will not go back to those people now.' The Messenger of Allah ﷺ replied:

أَنِّي لَا أَخِسْ بِالْعَهْدِ وَلَا أَحِسْ بِالْبَرْدِ وَلَكِنْ ارْجِعْ فَانِ كَانَ فِي نَفْسِكَ الَّذِي فِي
نَفْسِكَ الْآنَ فَارْجِعْ

'I do not break my promises or detain messengers, so go back. If [the feeling] that is in your soul this moment is [still] there, then come back [here].'

Abū Rāfi' رضي الله عنهما related that he did just that: he went back to Makkah, and then he returned and embraced Islam.

On this occasion, there was no real agreement with the pagans of Makkah. However, 'Allāmah al-Khaṭṭābī رضي الله عنهما states that when the pagans sent Abū Rafi as their messenger they expected that he would bring them an answer. This is why the Messenger of Allah ﷺ considered it an agreement of sorts, as though it was understood that he would come back. From this

¹ Abū Dāwūd, *Sunan*, *Kitāb al-Jihād*, *Bāb yastajinn al-imām fī al-'uhūd*, Hadith 8572.

one can easily grasp how particular the Messenger of Allah ﷺ and the noble companions were when it came to abiding by the terms of an agreement.

Similarly, Sayyidunā Mu‘awiyah رضي الله عنه had a truce with the Byzantine Empire for a fixed period of time. Mu‘awiyah, a man of great foresight, thought that once the truce expired the enemy would try to launch an attack against the Muslims, and that instead of waiting for it to happen it would be better to make preparations. Hence he began preparing his troops, within the borders of the Islamic state, before the truce had expired. As soon as the period of the truce was over, he marched into the enemy's lands. Since the enemy had not expected such a sudden attack, he had no adequate means to defend himself. Without facing much resistance, Mu‘awiyah رضي الله عنه was able to conquer a substantial amount of territory. He was still advancing when a horseman galloped towards him, shouting: 'Fulfil your promise. Do not break it!' When Sayyidunā Mu‘awiyah beckoned to the ride, he saw that it was none other than the renowned Companion Sayyidunā 'Amr ibn Absah رضي الله عنه who said:

سمعت رسول الله صلى الله عليه وسلم يقول: من كان بينه وبين قوم عهد فلا يشد عقدة ولا يحلها حتى ينقضى امدها او ينذر اليهم على سواء

'I heard the Messenger of Allah ﷺ say: "Whoever has a treaty with a people must not tighten or untie the knot of that treaty until it has expired. Otherwise, he must announce to [the other party] that he is renouncing it."¹

Salīm ibn 'Āmir, who narrated this Tradition, related that upon hearing this Sayyidunā Mu‘awiyah رضي الله عنه not only stopped advancing but even withdrew with his army.

It must be remembered that Sayyidunā Mu‘awiyah had not committed any obvious breach of the agreement, as he launched the attacks only after the truce had expired. But Sayyidunā 'Amr ibn Absah رضي الله عنه believed that to advance on the enemy before the truce had come to an end was contrary to the demands of precaution. And Sayyidunā Mu‘awiyah رضي الله عنه shared this opinion after hearing the above Hadith. He too was concerned that his action might be a violation of the agreement, and so he gave way immediately. This may well be the only incident in world history in which a conqueror

¹ Abū Dā'ūd, *Sunan*, *Kitāb al-Jihād*, Hadith 2759.

returned his newly conquered territories without ado, purely as a matter of religious precaution.

From this episode it is clear that these blessed souls were not driven by the lust to expand their territories, or by the enjoyment of conquering other nations. All they intended was to do deeds that were pleasing to Allah Most High. If His pleasure could be obtained by giving up newly conquered lands, they would do so. There is one more relevant incident concerning Sayyidunā Mu‘awiyah رضي الله عنه. The Byzantines made a treaty with him, under which they undertook to pay him *Kharāj*. As a token of their good faith they left some of their men with the Caliph as hostages. Later on, however, they broke their agreement and refused to pay their dues. As a result, the Muslims could have killed the detainees. However, Sayyidunā Mu‘awiyah رضي الله عنه refused to do so. He set them free and said:

وفاء بعذر خير من غدر بعذر

Faithfulness in return for breaking an agreement is better than breaking an agreement in return for breaking an agreement.²

Agreements on Mutual Defence

Apart from truces, we find also examples for agreements on mutual defence in the days of the Noble Prophet ﷺ. When the Messenger of Allah ﷺ arrived in Madīnah, there was no such thing as a central government. Each tribe was ruled by its own chief. Some of the tribes were Jewish. The Messenger of Allah ﷺ made arrangements to unite all these tribes under one central government, a move welcomed by all residents of Madīnah. On this occasion, the Messenger of Allah ﷺ also drafted a constitution and had it put in writing. This constitution set out the rights and duties of all citizens. According to Dr. Hamidullah's research, this document, which comprised forty-seven clauses, was the world's first written constitution. Clauses 37 and 44 related to an agreement with the Jews, according to which they would fight alongside the Muslims if the Muslims came under attack, and the Muslims would defend the Jews if the latter came under attack.²

At Hudaybiyyah, the pact which the Muslims made with the Makkān

¹ Abū 'Ubayd, *Kitāb al-Amwāl*, p. 175; anecdote 446.

² Muhammad Hamidullah, *al-Wathā'iq al-siyāsiyyah* (Beirut, 1405/1984-5), pp. 59-62.

infidels was only a truce. With Banū Khuzā'ah, however, they had also one of mutual defence. Banū Khuzā'ah had not collectively accepted Islam at the time, although some individuals had done so; nevertheless, the tribe had cordial relations with the Messenger of Allah ﷺ.¹

When the Treaty of Hūdaybiyyah was drafted, Banū Khuzā'ah and Banū Bakr were given the choice of making either party, the Muslims or the Makkans, their allies. Banū Khuzā'ah chose the Messenger of Allah ﷺ as their ally, while Banū Bakr sided with the Makkans. The agreement with Banū Khuzā'ah meant that if the Makkans or Banū Bakr attacked the Muslims, Banū Khuzā'ah would come to their aid; and if the Makkans or Banū Bakr attacked Banū Khuzā'ah, the Muslims would come to their aid. Later on some men of Banū Bakr launched a surprise attack on Banū Khuzā'ah and killed one of their men, using the weapons with which the people of Makkah had supplied them in this violation of the agreement. Banū Khuzā'ah then approached the Messenger of Allah ﷺ for help. The Messenger of Allah ﷺ announced that the treaty had been annulled by this violation. He then marched on Makkah with his Companions, and the Muslims took the Holy City. These events are mentioned in all books of *Sīrah* or Prophetic biography.²

From this incident all scholars have concluded that it is permissible to have a treaty of mutual defence with non-Muslims. According to Ibn Hajar al-‘Asqalānī this does not fall under the definition of *Muwalāt*, the relationship which is forbidden in the Holy Qur’ān.

Compassion and Sympathy

Sympathy and consideration for, and kindness to, non-Muslims on humanitarian grounds are liked by Allah ﷺ. On the individual level, the Holy Qur’ān enjoins kindness towards non-Muslims, telling the believers that even if their parents are non-Muslims, unless they call one to set up partners with Allah ﷺ they must be obeyed and treated kindly in this world. Allah Most High says:

وَإِنْ جَاهَكُوكُمْ عَلَى أَنْ تُشْرِكُوكُمْ بِمَا لَيْسَ لَكُوكْ بِهِ عِلْمٌ فَلَا تُطْعِهُمَا وَصَاحِبُهُمَا فِي
الَّذِينَ مَعْرُوفُونَ

¹ Ibn Hajar al-‘Asqalānī, *Fath al-Bārī*, *Kitāb al-Shurūt*, vol. 5, p. 337.

² See in particular Ibn Sayyid al-Nās, *‘Uyūn al-athar*, vol. 2, from p. 223 to the end.

And if they press you to associate anything with Me of which you have no knowledge, do not obey them; but treat them well in this world. (31:15)

Sūrat al-Mumtahinah, Āyah 8 gives a general command about the treatment of non-Muslims:

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ
تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ

'Allah does not forbid you, regarding those who have not fought you in matters of religion or driven you out of your homes, to show them kindness and deal with them justly.' (60:8)

This order to the Muslims as individuals to be kind to non-Muslims also includes sympathy on the community level. The Madīnan era of the Holy Prophet’s ﷺ life is full of instances that illustrate this. Imam Bukhārī narrates in several places an incident concerning Sayyidatunā Asmā’ bint Abī Bakr . Her mother, who was a pagan, came to Madīnah to ask her daughter for financial assistance. When Asmā’ asked the Messenger of Allah ﷺ what to do, he told her: صَلِّ إِلَيْكَ 'Treat your mother well.'¹

It is clear that the pagans of Makkah were obstinate in their enmity towards the Holy Prophet ﷺ. They missed no opportunity to vex him ﷺ and his Companions ﷺ for as long as they remained in Makkah. They even cut off the Holy Prophet’s ﷺ and other Muslims’ food supply while they were besieged in the ravine of Abū Ṭalib, forcing them to stay alive by eating leaves and leather. However, after the Messenger of Allah ﷺ had migrated to Madīnah, the people of Makkah were afflicted by a famine. Now it was their turn to be forced to suck on leather and suchlike in order to survive. According to some commentaries, the introductory Āyāt of Sūrat al-Dukhān refer to those days of hardship. On that occasion, the Messenger of Allah ﷺ not only prayed to Allah to remove the famine; according to ‘Allāmah al-Sarakhsī , he even sent the generous sum of five hundred gold coins to Abū Sufyan, to be divided amongst the poor and needy residents of Makkah.²

In addition, he sent Ajwā dates (a superior variety found in Madīnah) to

¹ al-Bukhārī, *Sahīh*, *Bāb al-Hadiyyah lil-mushrikīn*, etc.

² al-Sarakhsī, *al-Mabsūt*, vol. 10, p. 92; *Bāb Ṣulh al-mulūk*.

Abū Sufyān as a gift, and asked him to send some leather. According to Dr. Hamidullah, one reason why the Messenger of Allah ﷺ made this request is that the Makkans were probably unable to sell their wares because of a blockade of the route towards Syria, and the Messenger of Allah ﷺ apprehended that Abū Sufyān's stock of leather might become spoiled. He then sent the dates as a price for the leather, to meet Abū Sufyān's nutritional needs during the days of the famine.¹

Thūmāmah ibn Uthāl, a chieftain from Yamāmah, was captured and brought to Madīnah as a prisoner, but the Messenger of Allah ﷺ set him free. Having seen for himself the immaculate ways of Allah's Messenger ﷺ, he inclined towards Islam, and upon being freed he became a Muslim. In those days a large proportion of the grains consumed in Makkah came from Yamāmah. Sayyidunā Thūmāmah ﷺ decreed that from then on, the people of Makkah were not to receive a single grain from Yamāmah. This decree was a major source of concern for the people of Makkah. They found themselves compelled to write to the Messenger of Allah ﷺ, humbly requesting him to plead for them with Sayyidunā Thūmāmah. The Messenger of Allah ﷺ then told him not to cut off the food supply to Makkah. It was thanks to his intervention that the food supply was restored.²

It is hard to imagine that the history of mankind can have seen a greater example of sympathy, commiseration and kindness than on the day on which Makkah was conquered. The Messenger of Allah ﷺ had full power over those people who had thirsted for his blood and caused him and his Companions immense suffering year after year. But in his hour of triumph, despite having complete power over them, he forgave them all, telling them: 'Today no reproach shall befall you. Go! You all are free.'

Through incidents like these, he ﷺ showed that Muslims should not harbour aversion to non-Muslims on personal grounds. It is their false beliefs and the corruption arising from them that Muslims abhor. As human beings they should be treated with sympathy and kindness. Muslims should wish them well and, prompted by this goodwill, should present the teachings of Islam to them. The ultimate purpose of Jihad, too, is also

¹ M. Hamidullah, *Governmental Organisation during the Prophetic Era*, p. 258.

² Ibn Hajar, *Fath al-Bārī*, vol. 8, p. 78; *Kitāb al-Maghāzī*, Bāb Wafād Banī Hanīfah wa Hadīth Thūmāmah ibn Uthāl.

nothing other than well-wishing: the earnest desire to protect mankind from trials and corruption.

Cooperation in works of goodness

Moreover, the Holy Qur'ān not only permits but encourages cooperation with non-Muslims in works of goodness:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالْتَّقْوَىٰ ۝ وَلَا تَعَاوَنُوا عَلَىِ الْإِثْمِ وَالْعُدُوَانِ

Aid one another in goodness and piety, and do not aid one another in sin and enmity. (5:2)

The context in which Allah Most High states this principle relates to transgression against non-Muslims. The whole of this Āyah reads as follows:

وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ أَنْ صَدُوكُمْ عَنِ المسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا ۝ وَتَعَاوَنُوا
عَلَىِ الْبِرِّ وَالْتَّقْوَىٰ ۝ وَلَا تَعَاوَنُوا عَلَىِ الْإِثْمِ وَالْعُدُوَانِ ۝ وَاتَّقُوا اللَّهَ ۝ إِنَّ اللَّهَ شَدِيدُ
الْعِقَابِ

And let not your loathing for a people who once stopped your going to the Holy Mosque seduce you to transgress. Aid one another in goodness and piety, and do not aid one another in sin and enmity. And fear Allah; truly Allah is Severe in Punishment. (5:2)

This includes the command to assist non-Muslims in good deeds. If a non-Muslim has any plan to benefit mankind at large, and this plan does not contain anything that contradicts the Islamic *Shari'ah* or the interests of the Muslims, then it is not merely permissible for Muslims to support such a plan, but actually desirable.

There are examples of this kind of cooperation in the life of Allah's Messenger ﷺ, one of the most prominent being the treaty known as *Hilf al-fudūl*.

Hilf al-fudūl

The background of *Hilf al-fudūl* is as follows. During the Days of Ignorance, pacts of cooperation were on tribal basis. In other words, each tribe was expected to assist its own people. No one asked who was in the right and who was in the wrong, who was the oppressor and who the oppressed. Even

if the member of one's tribe was in the wrong, the other members were bound to support him. This outright injustice continued year after year until it came about that a man named al-'Āṣ ibn Wā'il wronged a man from Banū Zubayd by buying his merchandise and refusing to pay for it. The person from Banū Zubayd called on his allies from among the Makkan people to help him. However, they not only refused to help him against al-'Āṣ ibn Wā'il but even rebuked the man who had been wronged. That person then climbed on Jabal Abū Qays, a hill overlooking the *Haram*, and recited some poetry against injustice, in which the Quraysh were reprimanded for allowing it. As a consequence, some leaders of the Quraysh felt that something ought to be done to put an end to injustice. Among them was the Holy Prophet's ﷺ uncle, Zubayr ibn 'Abd al-Muttalib. He assembled the elders of Banū Hāshim, Banū Zahrah, and Banū Tīm at the home of 'Abd Allāh ibn Judān. Since Sayyidunā Muḥammad ﷺ also belonged to Banū Hāshim, he too took part in the meeting. At that time he would have been about twenty years of age. After some discussion, those present called on Allah ﷺ to witness their pledge:

لنكونَ يداً واحدةً مع المظلوم على الظالم حتى يؤدي إليه حقه ما بل بحر صوفة
ومارساحراء وثير مكانهما وعلى التآسي في المعاش.

'We shall assuredly be [united like] a single hand in aiding the oppressed against the oppressor until [the latter] fulfils his right, and we shall share one another's troubles in matters of livelihood, for as long as the sea moistens wool and as long as [Mounts] Hirā' and Thabīr remain in their places.'

After that, the group forced 'Āṣ ibn Wā'il to give the man from Banū Zubayd his due.

The Noble Prophet ﷺ participated in this pledge long before he was invested with Prophethood. But even after becoming the Messenger of Allah, he ﷺ used to praise it:

ما احب ان لي بحلف حضرته بدار ابن جدعان حمر النعم واني اغدر به هاشم
وزهرة وتيم تحالفوا ان يكونوا مع المظلوم ما بل بحر صوفة. ولو دعيت به لاجبت

'Even if I were given red camels, I would not like to violate the pledge

¹ al-Suhaylī, *Rawd al-unuf*, vol. 1, p. 56.

in which I participated at the house of Ibn Judān. Hāshim, Zahrah, and Taym pledged to side with the oppressed as long as the sea moistened wool. And if I were called on [now] to join in such a pledge, I would certainly agree to.'

This pact came to be known as *Hilf al-fudūl*. *Fudūl* is the plural of *fadl*, which means 'merit' or 'excellence'. Since it comprised many points of excellence, it received a name reflecting this. Some scholars have stated that early in Arab history three men of the tribe of Banū Jurhum, all named *Fadl*, were the first to form a pact of this kind. Much later, when history again witnessed a treaty of this kind, it was associated with its three originators. And verily Allah ﷺ knows best.

In any case, on the basis of this treaty 'Allāmah Suhaylī ﷺ and other scholars concluded that when it comes to good deeds it is not merely permissible but recommended to cooperate with non-Muslims. The reason is that the Holy Prophet ﷺ himself said: And if I were [now] called on to join in such a pledge, I would certainly agree to.'

Jihad

These historical facts demonstrate that the relations the Islamic state had with non-Muslims was determined by the latter's behaviour. As the Holy Qur'ān commands:

فَمَا اسْتَقَامُوا لَكُمْ فَأَسْتَقِيمُوا لَهُمْ

So as long as they are true to you, be true to them. (9:7)

As for those forces who pose a threat to Islam and Muslims, who are staunch enemies of the Muslims, who are bent on oppressing and harming them, who create obstacles to the mission of Islam, or who are in general inclined to spreading corruption on earth, they must be resisted by any truly Islamic state through *Jihad*. *Jihad* here denotes both armed and non-armed kinds of struggle. The Holy Qur'ān states the purpose of armed *Jihad* in various *Āyāt*:

¹ Ibn Sa'd, *Ṭabaqāt*, vol. 1, p. 107; Ibn Sayyid al-Nās, *Uyūn al-athar*, vol. 1, p. 59. This statement by the Holy Prophet ﷺ is also narrated, with minor variations in wording, in the *Mustadrak* of al-Hākim (vol. 2, p. 220; end of *Kitāb al-Makātib*), the *Sīrah* of Ibn Hishām, the *Sīrah* of Ibn Kathīr (vol. 1, p. 258), and several other sources.

أُذْنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظُلْمُوا وَإِنَّ اللَّهَ عَلَى نَصْرِهِمْ لَقَدِيرٌ

Sanction is given to those who fight because they have been wronged; and truly Allah is Supremely Able to give them victory. (22:39)

According to this *Āyah*, the first objective of armed Jihad is self-defence. If the Muslims are attacked by non-Muslim forces, they may resort to warfare in order to defend themselves. The word 'sanction' or 'permission' has been used because during their life in Makkah, the Muslims were not allowed to fight even in self-defence. They were ordered to bear their afflictions patiently. In this *Āyah* they were for the first time given permission to use weapons to defend themselves. This clarification was necessary because we know from elsewhere in the Holy Qur'ān, the Sacred Hadiths, and other sources that in such circumstances armed self-defence becomes compulsory. Another *Āyah* states that it is a religious duty to take up arms in self-defence. Allah Most High says:

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ

Fight for the Cause of Allah those who fight you. Do not transgress; truly Allah loves not transgressors. (2:190)

The second objective of armed Jihad is to rescue Muslim residents who are being subjected to the tyranny and oppression of non-Muslim powers. The Holy Qur'ān tells us:

وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ
الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرِبَةِ الظَّالِمُونَ أَهْلُهَا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ
وَلِيَا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ نَصِيرًا

And what ails you that you do not fight in the Path of Allah, while the weak among the men, women and children say: 'Our Lord, deliver us from this township whose people are tyrants. Grant us a supporter from You, and grant us a helper from You?' (4:75)

This includes cases where non-Muslims hinder the mission of Islam, which is referred to as 'صدّ عن سبيل الله' (hindering [others] from the path of Allah) in the Holy Qur'ān. Allah Most High says:

يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٌ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدٌّ عَنْ سَبِيلِ اللَّهِ
وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِنْدَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ
الْقَتْلِ وَلَا يَرَالُونَ يُقَاتِلُونَكُمْ حَقَّ يَرُدُّوكُمْ عَنْ دِينِكُمْ إِنْ اسْتَظَاغُوا

They ask you about the Sacred Months [and] fighting therein. Say: 'Fighting therein is a serious matter, but hindering others from the Way of Allah, disbelieving in Him, and [hindering] from the Holy Mosque and driving its people away from it is a greater matter in the sight of Allah; and insurrection is worse than killing.' And they will not cease to fight you until they turn you away from your religion, if they can. (2:217)

The third objective of Jihad is to put a check on corruption and unrest. The 'oppressed' need not necessarily be Muslims. Wherever non-Muslims set up any oppressive or tyrannical system under which they force people to abide by their man-made unjust laws, to save people from wrong and bring them the justice of the Islamic system which operates according to Divine Commandment is another important objective of Islam, expressed by the Holy Qur'ān thus:

وَقَاتِلُوهُمْ حَقَّ لَا تَكُونَ فِتْنَةٌ وَيَكُونُ الَّذِينَ كُلُّهُ لِلَّهِ فَإِنْ انْتَهُوا فَإِنَّ اللَّهَ بِمَا
يَعْمَلُونَ بَصِيرٌ

And fight them until there is no more unrest and the religion is solely for Allah. Then if they stop, Allah is All-Seeing of whatever they do. (8:39)

This is what Sayyidunā Rabī' ibn 'Amr رض told the great Persian commander Rustam, when asked about his reason for attacking Persia:

الله ابعثنا لتخراج من شاء من عبادة العباد الي عبادة الله ومن ضيق الدنيا الي
سعتها ومن جور الاديان الي عدل الاسلام

'Allah has sent us so that we may deliver whomever He wills from the servitude of men to the servitude of Allah عز, from the straits of the world to its expanses, and from the wrongdoing of other religions to the justice of Islam.'

How true this statement by Sayyidunā Rabī' ibn 'Amr رض is can be fully

¹ Ibn Kathir, *al-Bidāyah wa al-nihāyah*, vol. 7, p. 46.

appreciated by anyone who has studied the oppressive systems instituted by the rulers of the Roman and Persian Empires.

These are the objectives that render Jihad legal. It is beyond the scope of the present discussion to discuss them in greater detail. There are numerous books on the subject, which also contain refutations of the baseless propaganda which alleges that Jihad is meant to convert people to Islam by force.

The wars fought before the advent of Islam, and also those which fought by major powers today rarely have any objective other than territorial expansion or control over natural resources. Once the fire of war is ablaze, no rule, law, or moral code remains unbroken. Islam, however, defined for the first time objectives for warfare, raising it above mere greed for territory and resources. It has declared armed Jihad to be war fought for higher, even sacred, purposes. Along with that, Islam has laid down rules and codes of conduct to be followed in warfare, with which the world had hitherto been completely unacquainted. It was Muslim jurists who first worked on international laws with painstaking efforts. Before them, no one even thought of having detailed rules and regulations concerning warfare. These injunctions are contained in many books of *Fiqh*, especially those that deal with *Siyar* (conduct of life). It is the duty of an Islamic government to let their affairs, whether in days of war or peace, be guided by rules and principles been derived from the Holy Qur'an and the Sunnah.

CHAPTER SIX

OUSTING THE GOVERNMENT

Some Western writers believe that so far as Islam is concerned, once a government has been formed there is no way ever to dismiss it. This notion may have arisen from reading the injunctions that forbid revolting against the ruler, but it is completely baseless and mistaken. In fact, just as a Caliph may assume power peacefully in Islam, there are also ways through which he may be removed from office.

PEACEFUL DISMISSAL

The ruler can be dismissed in a peaceful manner for any of the following reasons:

If the ruler himself has stepped down: that is, he has resigned from his post. Obviously, by doing so he will have dismissed himself.

If the ruler suffers from some condition which prevents him from running the affairs of the state. If, for example, he loses his sanity, or he suffers from any ailment which prevents him from fulfilling his official duties, such a situation definitely calls for dismissal.

If he commits an act of wickedness that includes elements of tyranny. Examples are taking to consuming liquor, taking bribes, or levying impermissible taxes. In this case, the ruling is that the ruler ought to be dismissed, but it is not permissible to take up arms and rebel against him. If it can be achieved peacefully, it is obligatory to dismiss him. Ibn Hajar al-'Asqalānī wrote in his commentary on al-Bukhārī:

الذى عليه العلماء في امراء الجور اني قدر على خلعه بلا فتنة ولا ظلم وجب والا
فالواجب الصبر

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فالواجب الصبر

'The point on which scholars are agreed concerning tyrants is that if they can be dismissed without causing mischief or oppression, it is obligatory to dismiss them. Otherwise, it is obligatory to remain patient.'¹

Patience means that one must not try to remove him by means of an armed uprising. One way of peaceful dismissal that can be practiced nowadays is that this authority be passed on to the advisory body or the judiciary, who are to decide whether the ruler is liable to dismissal on the grounds of wickedness. If he is, then the court can give a verdict to that effect.

If none of the above causes is present, but the policies made by the ruler are not in the interest of the state, and the people dislike him on that account, could that justify his dismissal? I have not been able to find a definite answer to this question, but from the rules in general it appears that there is nothing wrong with the same advisory body that appointed the ruler dismissing him in a peaceful manner and by constitutional means in the above-mentioned circumstances. This view is supported by a Tradition narrated by Sayyidunā Anas رض according to which the Messenger of Allah صلی اللہ علیہ وسّلّم cursed three kinds of people, including the following:

ام قوماً وهم له كارهون

'A person who acts as Imam for a people against their will.'²

There are some minor flaws in the chain of this Tradition, but the path that transmits it from al-Hasan al-Baṣrī رض in *mursal* form is authentic. In addition, Imam al-Tirmidhī recorded it as a statement by 'Umar ibn Ḥārith ibn Muṭlaq with a *ṣaḥīḥ* chain of transmission.

From this is learnt that it is not a good thing if a person who is disliked by the people continues to rule over them, and that any peaceful means may be adopted to get a better, more popular ruler, in accordance with the Holy Prophet's صلی اللہ علیہ وسّلّم statement. Another Hadith, related by Sayyidunā 'Awf ibn Mālik al-Ashja'i *radiya Allāh 'anh* informs us that the Messenger of Allah صلی اللہ علیہ وسّلّم said:

خيار ائمتك الذين تحبونهم ويحبونكم وتصلون عليهم ويصلون عليك وشرار ائمتك الذين تبغضونهم ويبغضونكم وتلعنونهم ويلعنونكم

¹ Ibn Ḥajar, *Fath al-Bārī*, vol. 13, p. 8; *Kitāb al-Fitan*, *Bāb qawluh* رض *Halāk ummati*...

² al-Tirmidhī, *al-Jāmi'* (=Sunan), *Kitāb al-Ṣalāh*; Hadith 358.

'The best of your rulers are those whom you love and who love you, for whom you pray and who pray for you. And the worst of your rulers are those whom you dislike and who dislike you, whom you curse and who curse you.'¹

This Hadith admittedly continues as follows: when the Messenger of Allah صلی اللہ علیہ وسّلّم was asked: 'فلا ننابذهم عند ذلك؟' (Then should we not try to rid ourselves of them?) he replied:

لا ما اقاموا فيكم الصلوة. لا، ما اقاموا فيكم الصلوة، الا من ولی عليه وال فراء
يأتي شيئاً من معصية الله فليكره ما يأتي من معصية الله ولا يتزعن يدا من طاعة

'No, not as long as they establish the prayer amongst you. No, not as long as they establish the prayer amongst you. When one sees someone whom Allah has put in charge involved in disobedience to Allah, one ought to hate the disobedience to Allah that he has committed; but one certainly may not cease to obey him.'²

What this Tradition really means, however, is that it is not permissible to take up arms against the ruler. Removing him by peaceful means is not included in this prohibition. Hence while working out a framework for an Islamic government, one ought to include a clause in the constitution by which one can remove a ruler under such circumstances.

Most countries appoint their head of state, whether he be President or Prime Minister, only for a certain period of time. Once this term has elapsed, unless re-elected, the head of state is automatically considered as dismissed, and a new one is to be elected. Although Islamic history does not provide us with examples where a Caliph was elected for a certain period of time only, that is still be a possible course of action because, as has been pointed out a number of times, Islam is very flexible regarding the details of political organization. So, although the Holy Qur'ān and the Sunnah do not contain any explicit permission to appoint a Caliph only for a certain period of time, there is also nothing to be found that forbids doing so. The advisory body appoints the ruler or Caliph. If at the time of his appointment it were laid down how long the ruler is to remain in power, there

¹ Muslim, *Ṣaḥīḥ*, *Kitāb al-Imārah*; Hadith 4768.

² Muslim, *Ṣaḥīḥ*, *Kitāb al-Imārah*; Hadith 4768.

would be nothing wrong with that. The term should nevertheless be long enough to allow the ruler time to implement his policies effectively. Hence one more way of dismissing a ruler would be simply to stipulate from the outset that he is only allowed to be in power for a certain length of time.

OUSTING A RULER BY FORCE

From the Holy Prophet's ﷺ sayings it is apparent that the Islamic state considers civil war to be a dreadful atrocity to be avoided at all costs. What the Messenger of Allah ﷺ most strongly emphasised during his Farewell Pilgrimage was the following:

«فَإِنْ دَمَائِكُمْ وَأَمْوَالَكُمْ» قَالَ مُحَمَّدٌ وَاحْسِبْهُ قَالَ «وَأَعْرَضُكُمْ حَرَامٌ عَلَيْكُمْ كَحْرَمَةٍ
يَوْمَكُمْ هُذَا فِي بَلْدَكُمْ هُذَا فِي شَهْرِكُمْ هُذَا. وَسْتَلِقُونَ رِبِّكُمْ فَيُسْتَلِقُوكُمْ عَنْ أَعْمَالِكُمْ فَلَا
تَرْجِعُنَّ بَعْدِي كُفَّارًا أَوْ أَضْلَالًا يُضْرِبُ بَعْضُكُمْ رَقَابَ بَعْضٍ. إِلَّا لِيَلْعُجَ الشَّاهِدُ الْغَائِبُ
فَلَعْلَّ بَعْضَ مِنْ يَلْعُجُهُ يَكُونُ أَوْعِيًّا لِهِ مِنْ بَعْضِ مِنْ سَمْعِهِ.» ثُمَّ قَالَ: «إِلَّا بَلَغْتَ؟»¹

'Your blood and your possessions (Muhammad [one of the narrators], said: "I think he also said: 'and your honour'"') are to be as sacrosanct as this day of yours in this city of yours, in this month of yours. You shall meet your Lord, and He shall ask you about your deeds, so do not return to being unbelievers after my lifetime] or go astray, some of you smiting the necks of others. Listen! Let him who is present convey [this] to him who is absent. It may be that some of those to whom it is conveyed will retain it better than those who have heard it directly.' Then he said: 'Have I not conveyed [the message?]'¹

To avoid civil war amongst the Muslims, then, the *Shari'ah* is willing to put up with many other (lesser) evils. This is why the Messenger of Allah ﷺ had again and again, in different ways, to avoid revolting against a tyrannical ruler, to avoid bloodshed amongst the Muslims. We have already mentioned the Tradition from Sayyidunā 'Awf ibn Mālik al-Ashja'i رضي الله عنه which contains the words:

¹ al-Bukhārī, *Sahīh*, *Bāb Hajjat al-wadā'*, Hadith 4406; Muslim, *Sahīh*, *Bāb al-Qasāmah*, Hadith 4351, wording as given above.

لَا مِنْ وَلِيٍ عَلَيْهِ وَالْفَرَّآءِ يَأْتِي شَيْئًا مِنْ مُعْصِيَةِ اللَّهِ،
وَلَا يَنْزَعُنَّ يَدًا مِنْ طَاعَةٍ

'No, not as long as they establish the prayer amongst you. No, not as long as they establish the prayer amongst you. Listen! When one sees the person whom Allah has put in charge involved in disobedience to Allah, one must dislike his act of disobedience but still one must not cease to obey him.'²

It is reported from Sayyidunā Hudhayfah ibn Yamān رضي الله عنه that once, while describing the evils that shall appear towards the end of time, the Messenger of Allah ﷺ said:

سِيَقُومُ فِيهِمْ رِجَالٌ قُلُوبُهُمْ قُلُوبُ الشَّيَاطِينِ فِي جَثَمَانِ أَنْسٍ

'There shall arise amongst them men whose hearts are the hearts of devils in human bodies.'³

Sayyidunā Hudhayfah رضي الله عنه said further that he asked the Messenger of Allah ﷺ what he should do if he lived to witness those times. The Messenger of Allah ﷺ told him:

تَسْمَعُ وَتَطِيعُ لِلَّامِيرِ وَإِنْ ضُرِبَ ظَهِيرُكَ وَأَخْذَ مَالَكَ فَاسْمَعْ وَاطِعْ

'You will hear and obey the leader. Even if your back is beaten and your wealth is seized, hear and obey.'⁴

Another Tradition tells us:

إِنْ كَانَ لِلَّهِ خَلِيفَةً فِي الْأَرْضِ فَضُرِبَ ظَهِيرُكَ وَأَخْذَ مَالَكَ فَاطِعْهُ

'If Allah has a *Khalīfah* on Earth who beats your back and seizes your wealth, still obey him.'⁴

This does not mean that it is impermissible to defend oneself. It merely means that one must not rebel against the ruler since that might lead to bloodshed amongst the Muslims, which is an evil that must be avoided. But as already mentioned, it is obligatory to remove such a ruler through

¹ Muslim, *Sahīh*, *Kitāb al-Imārah*; Hadith 4768.

² Muslim, *Sahīh*, *Kitāb al-Imārah*, *bāb al-amr bi luzūm al-jamā'ah*.

³ Muslim, *Sahīh*; *Ibid.*

⁴ Ibn al-Athīr, *Jāmi' al-uṣūl*, vol. 10, p. 45; Hadith 7509.

peaceful means, if possible. It is also permissible to defend oneself as far as necessary. This will be discussed in detail below.

There is only one case in which the Messenger of Allah ﷺ permitted the Muslims to oust the ruler by force. Sayyidunā ‘Ubādah ibn al-Ṣāmit reported: ‘The Messenger of Allah ﷺ took from us the pledge:

علي السمع والطاعة في منشطنا ومكرهنا وعسرنا ويسرنا واثرة علينا وان لا ننازع
الامر اهلة الا ان تروا كفرا بواحدا عندكم من الله فيه برهان

“To listen and to obey, whether we liked it or not, be we in hardship or ease, even when others are preferred over us; and not to wrangle with those in power over their power, unless you see them involved in open infidelity of which you have clear evidence from Allah.”¹

This means that one may only try to oust a ruler by force if he is guilty of open, undisguised infidelity and disbelief. The Messenger of Allah ﷺ clearly said that his *Kufr* must be so overt (*bawāh*) that anyone could recognise it. Furthermore, there must be certain proof that the ruler has committed that kind of *Kufr*; mere hearsay, conjecture or propaganda do not suffice to prove his guilt. Maulana Ashraf ‘Ali Thānvi رحمه اللہ از اعلیٰ pointed out that the phrase (اَلَا تَرَوْا كُفُّارًا بَوَاحًا) (‘unless you see overt unbelief’) here means to have seen something of the kind with one’s own eyes, not just entertaining a supposition to that effect. This is because the word تَرَوْا (though it can also mean ‘you think’ or ‘you consider’) has only one object in the above sentence. If it meant ‘think’ or ‘consider’, it would require two objects, according to the rules of Arabic grammar. Hence unless one has actually witnessed the ruler committing infidelity one is not permitted to rebel against him. There must be unanimity as to the *Kufr*, and likewise one must be absolutely certain that the ruler has committed it. Only then is it permissible to rebel.

There appear to be two further conditions: firstly that it lies within one’s power to remove the ruler, and secondly that his removal not be likely to give rise to even greater trouble. Mischief here means the conviction that a forceful removal of the present ruler would give rise to warfare amongst other seekers of power; that the people would not be able to reach an agreement as to who should rule them in future, meaning that bloodshed would be inevitable; or that the enemy might seize the chance to attack

¹ al-Bukhārī, *Ṣaḥīḥ, Kitāb al-Fitan*; Hadith 7056.

and conquer a state plagued by civil war, which would lead to its losing the status of *Dār al-Salām* and becoming *Dār al-Kufr* instead.

Maulana Ashraf ‘Ali Thānvi رحمه اللہ از اعلیٰ wrote a treatise on this subject, the title of which is *Jazl al-kalām fi ‘azl al-imām*. This treatise has been published in his six-volume *Imdād al-Fatāwā*, and a synopsis is also included in *Takmīlat Fātiḥ al-Mulhim*. The author discusses in great detail the various kinds of malpractices committed by rulers, as well as the relevant rulings. Parts of the Mawlānā’s discussion of the subject have already been referred to. However, there are two further points that should be mentioned.

Mawlānā Thānvi رحمه اللہ از اعلیٰ draws a distinction between trying to remove a ruler by force and trying to ward off his tyranny. Removing him by force is not permissible unless there is undisguised and undisputed *Kufr* on his part. But if a person’s life or belongings become the subject of the ruler’s tyranny they have the right to defend their life and property, as is the right of any human being; and if he needs to use arms to that end he may do so. The Messenger of Allah ﷺ said:

من قُتل دون ماله فهو شهيد

‘Whoever is killed defending his property is a martyr.’

Imams Tirmidhī, Abū Dā’ūd and Nasā’ī رحمه اللہ از اعلیٰ narrate this Tradition as follows:

من ارید ماله بغير حق فقاتل و قُتل فهو شهيد

‘If a person whose property is sought by someone who has no right to it fights [to defend it] and is killed, he is a martyr.’²

Fighting for the protection of a person’s life or wealth is usually done on an individual basis and is not likely to result in the kind of large-scale bloodshed that is often called ‘mischief’ or *fitnah*; so this kind of fighting is permissible. On the other hand, fighting intended to oust the government usually results in large-scale bloodshed: that is, turmoil. Some jurists hold that when people rise up to rid the state of a ruler whose tyranny is obvious, they should be assisted in their endeavour; but if his tyranny is not obvious, the people should assist the ruler and not those who rose against him.³

¹ al-Bukhārī, *Ṣaḥīḥ, Kitāb al-Mazālim*, vol. 3, p. 136; Hadith 2480.

² Ibn al-Athir, *Jāmi‘ al-uṣūl*, vol. 2, p. 746; Hadith 1246.

³ Ibn ‘Ābidīn, *Radd al-muhtar*, vol. 4, pp. 264–265; *Bāb al-Baghāh*.

Ḥakīm al-Ummah [Thānī] ﷺ stated that there are also separate cases where the ruler's wickedness transcends to the people as well: that is, he corrupts them especially with regard to religion. For example, he might force them to commit acts of disobedience. If this happens to just one or two people, this will be a case of *Ikrāh* (coercion), and governed by the relevant injunctions. But if the ruler has made policies that force all of his subjects into disobedience—and this includes the implementation of un-Islamic laws—then if his reason for doing so is that he considers these un-Islamic laws superior to the Holy *Shari'ah*, this will be considered as an act of undisguised and manifest *Kufr*. If he does not consider them superior, but has departed from the *Shari'ah* through either unawareness of the correct interpretation or lethargy, this is considered not as manifest *Kufr* but as something approaching it, for it necessarily entails a slighting of the *Shari'ah*. Hence this also provides a justification for rising up against the ruler. However, two points must be remembered in this regard.

Firstly, especially with regard to the latter case (the ruler's negligence in implementing the *Shari'ah*), there may be differences of opinion as to whether this can be treated as manifest *Kufr*. Some people may be in favour of rising up against him, while others may be opposed to it. This kind of difference is a matter of *Ijtihād*, and so neither group can be reproached for the opinion they hold. It was differences of *Ijtihād* that prompted Yazid and some leaders among Banū Umayyah to rise up against Imam al-Husayn ﷺ and it was differences of *Ijtihād* that caused the people of Hirrah to rise up. That was why Imam Abū Ḥanīfah supported Zayd ibn 'Alī and Ibrāhīm al-Nafs al-Zakiyyah ﷺ during their uprising, whereas others did not.

The second point to be remembered is that two conditions must be fulfilled, once it becomes permissible to rise up against the ruler. The first is that it must lie within one's power to oust the government; the second is that his being ousted not be likely to lead to even greater mischief. In this regard there might also be a difference of opinion. Imam Abū Ḥanīfah ﷺ considered rising up against the ruler to be permissible in principle but never actively participated in any such undertaking. He reportedly explained this as follows:

ان قام به رجل واحد قتل ولم يصلح للناس امر، ولكن ان وجد عليه اعواناً صالحين ورجلان يرأس عليهم ماموناً في دين الله، وهذه فريضة ليست كالافتراض

يقوم بها الرجل وحده، وهذا متى امر به الرجل وحده اشاط بدمه وعرض نفسه للقتل، فاخاف ان يعين علي قتل نفسه¹

During the early period of Islam, Imam Abū Ḥanīfah, Sayyidunā Ḥasan ibn Ṣālih ibn Ḥayy, and some others ﷺ considered an armed rising against a wicked ruler who is likely to slight the Holy *Shari'ah* to be permissible. Later jurists, however, including Ḥanafis, agreed almost unanimously, in the light of practical experience, that an armed uprising does not normally produce positive outcomes, and that it is better to avoid such measures. Ibn Ḥajar al-'Asqalānī ﷺ writes about Ḥasan ibn Ṣālih ﷺ:

[الحسن بن صالح] كان يرى السيف يعني كان يرى الخروج بالسيف على ائمة الجور، وهذا مذهب للسلف قديم، لكن استقر الامر على ترك ذلك لما راوه قد افضى الي اشد منه، ففي وقعة الحرة وقعة ابن الاشعث وغيرهما عظة لمن تدبر، والسحن مع ذلك لم يخرج على احد

'Ḥasan ibn Ṣālih considered an armed rebellion against the ruler permissible, which was also the view held by earlier generations. However, the *Ummah* later adopted the view that this should be avoided, scholars having witnessed that armed rebellions usually make conditions worse. The incidents of Ḥarrah and Ibn al-Ash'ath are thought-provoking if considered in the right light. Ḥasan ibn Ṣālih himself never rebelled against anyone, although he deemed it permissible.'²

Ibn Ḥajar ﷺ, in his commentary on the *Ṣaḥīḥ* of al-Bukhārī, wrote the following concerning a Hadith related by Sayyidunā 'Abd Allāh ibn 'Abbās ﷺ:

قال ابن بطال: في الحديث حجة في ترك الخروج على السلطان ولو جبار، وقد اجمع الفقهاء على وجوب طاعة السلطان المغلوب والجهاد معه وان طاعته خير من الخروج عليه لما في ذلك من حقن الدماء وتسكين الدهماء وحجتهم هذا الخبر وغيره مما يساعد له ولم يستثنوا من ذلك الا اذا وقع من السلطان الكفر الصريح فلا تجوز طاعته في ذلك بل تجب مجاهدته لمن قدر عليها

¹ al-Qurashi, *al-Jawāhir al-mudī'a*, tr. Ibrāhīm ibn Maymūn al-Ṣā'igh, vol. 1, p. 50.

² Ibn Ḥajar al-'Asqalānī, *Tahdhīb al-tahdhīb*, vol. 2, p. 248; *Tarjumat al-Ḥasan ibn Ṣālih*.

According to 'Allāmah Ibn Battāl رحمه الله this Hadith proves that one must not rebel against the ruler, even if he be a tyrant. The jurists are unanimous that it is obligatory to obey [in lawful matters] even a ruler who has usurped power, and to fight in Jihad for him; and that obedience is better than armed rebellion, to prevent bloodshed and maintain public order. The jurists argue from the above Hadith and others that support it. They make no exception to this injunction unless the ruler commits open disbelief. In that case, it is not permissible to obey him; in fact, it is obligatory for those able to do so to fight against him.'

However, 'Allāmah Abū Bakr al-Jassās رحمه الله adopts in his exegesis of Sūrat al-Baqarah, Ayah 124, (لا ينال عهدي الظالمين, 'My covenant does not include wrongdoers'), the position adopted by Imam Abū Hanīfah رحمه الله: that it is permissible to rebel against rulers of that kind, provided that one has the power to do so and that this will not lead to even greater trouble. He even went so far as to say that government by incompetent and wicked rulers is not to be considered legally valid at all, and that it is not obligatory to abide by its laws. However, later scholars seem to have adopted the majority position as expressed by Ibn Hajar رحمه الله. Shams al-A'immah al-Sarakhsī رحمه الله made the following elucidations:

و بهذا اللفظ يستدل من يزعم ان الحاكم ينزع بالجور وليس هذا بمذهب لنا وقد
يتنا ذلك فيما املينا من شرح الزيدات في باب التحكيم

'Those who claim that a ruler may be dismissed on the grounds of oppression (*jawr*) cite this as evidence. But that is not our school of thought, as we have explained in the commentary we wrote on the *Ziyādāt*, in the chapter on arbitration (*Tahkīm*).'¹

POLITICAL MOVEMENTS

There is one further question that needs to be discussed. If it is impermissible to rebel against the government, what peaceful means can be

¹ al-Sarakhsī, *Sharḥ al-Siyar al-kabīr*, vol. 3, p. 869; *Bāb al-Istinjār fī 'ard al-harb wa al-nafl*; anecdote 1567.

adopted to change the government or to have one's rights and demands fulfilled? And are the popular methods employed for this purpose, such strikes, hunger-strikes, rallies and protests permissible from the *Shari'ah* point of view?

For so many years now our outlook on life, especially with regard to politics, has been based entirely on modern western ideas. This has resulted in many things being considered almost essential to political life, including the staging of protests, rallies, strikes, vandalism, and so on, by means of which people try to force the government to accede to their demands. As far as the juristic status of political movements is concerned, it must be said that some of them are downright impermissible and unlawful. Examples are hunger strikes, when they reach the point of suicide, or any other measures that jeopardise people's lives, belongings or honour, or that damage state property. State property, if course, does not belong to the government or the rulers: it is the joint property of all citizens. If this kind of property is damaged, loss is inflicted on the whole nation. This is a sin that cannot be forgiven easily as it involves the rights of Allah's bondmen, and the principle governing any violation of these rights is that it is impossible for them to be forgiven simply through repentance. They cannot be forgiven until and unless the person whose right was violated has pardoned the transgression. But in this instance it is not just one person or a small group of individuals whose rights have been violated, but a whole nation—and it is impossible to ask every member of the nation for pardon. That is why damaging state property is a far more serious matter than damaging private property.

As far as general strikes are concerned, theoretically the ruling ought to be that if an appeal is made to people to close their businesses, as a demonstration of displeasure with the government, and no coercion is involved, meaning that people do so of their own free will, that is not sinful in the eyes of the *Shari'ah*. Such an action would be considered a permissible means to achieve one's ends. However, while employing this means, care must be taken that people still have adequate access to the necessities of life, such as medical treatment. Unfortunately, however, that is not the case in practice. Those who call strikes do not usually content themselves with that. Forcing people to close their businesses has become an essential concomitant of strikes. If anyone dares to take out his vehicle during a strike, it is pelted

with stones. Roads are blocked. If someone does not want to take part in the strike, the strikers vent their frustrations and anger on him. If they try to force him to participate in the strike but he persists in refusing, he may well become a victim of violence.

All this, obviously, is strictly unlawful and forbidden. The result of this kind of strike is that poor people who live from hand to mouth are deprived of the opportunity to earn their bread for the day. Patients will suffer from the non-availability of medical services, and some will even die. It is strange that there are claims about upholding 'democracy' and 'freedom of opinion', and yet those who wishes to express their own opinion by not participating in a strike are denied that right. This approach is not compatible with the teachings of Islam, or with moral standards, or with the principle of freedom of opinion. Today, strikes usually involve the evils just mentioned. It hardly ever happens that a party or group calls for a strike and then waits quietly to see who follows that call; who closes his shop, and who does not. Even something that is permissible in principle is to be considered impermissible and forbidden, if it is misused for impermissible purposes. Hence a strike that leads to disruption of public order and to vandalism, and that keeps people from doing their work, cannot be considered acceptable in the Holy *Shari'ah*. When politics is not considered an objective in itself—when the actual objective is to obey Allah ﷺ—the means and tactics employed should conform to and not violate the *Shari'ah*. There is no possible benefit in a movement that attempts to establish Islam by breaking the laws of Islam.

The same holds true for rallies. If they do not cause any great inconvenience to ordinary people, they are in principle permissible. As a rule, however, such events are accompanied by acts of vandalism, not to mention the trouble they cause to the public. Seen from this point of view, they cannot be considered permissible.

Now there remains this question: Is there any *Shari'ah*-compliant way of lawfully exerting pressure on the government? The answer is that the Holy *Shari'ah* has a way which if acted upon would force even a tyrannical government to its knees. It is to simply act according to the maxim لا طاعة لمخلوق في معصية الخالق ('There should be no obedience to a creature that entails disobedience to the Creator'). If one were to implement this maxim that the order of a creature is not to be accepted when it stands

in disobedience to the Creator—if the whole nation agreed no longer to comply with laws that are not in accordance with Islam—the government would be helpless. Imagine what would happen if judges insisted that they would not work for the courts until they were given the authority to pass verdicts according to the Holy *Shari'ah*? What if lawyers said that until laws were in accord with the *Shari'ah* they would not attend court sessions as lawyers? What if bank managers and clerks refused to do their work until the banking system was freed from the curse of interest? What if the people refused to deposit their money in banks until they were interest-free? What if traders refused to deal with banks until these were *Shari'ah*-compliant? If people assumed the responsibility imposed on them by the maxim 'There should be no obedience to a creature that entails disobedience to the Creator,' and simply refused to comply with non-Islamic laws, the government would soon be forced to its knees. This would constitute a *shar'i* strike. But it appears difficult, since some interests have to be sacrificed. It is much easier to join a political party, shout pro-Islamisation slogans, and continue to receive interest. It is also easy to attend a rally, shout '*Islām Zinda bād*' ('Long live Islam!') to one's heart's content, but to live and judge by non-Islamic laws. To use one's account or profession as a weapon would require more sacrifice and courage.

It is true that this method works only when the majority of people, if not all, are willing to employ it. To convince them, one would have to create among the masses both awareness and readiness to act in political parties. This cannot be achieved without planning. One would have to design and run a mass awareness programme in educational institutions and public gatherings. It must educate people about the harmful effects of jobs that support a non-Islamic system; how such jobs jeopardise one's worldly and otherworldly success, and how vital it is to earn one's livelihood in an Islamic manner. If a large segment of the population began to abhor such jobs so much that they would rather make do with less income than continue in that kind of employment, and if they were prepared to make other sacrifices as well, this tactic could be far more successful than any strike has been so far. How often have military rulers in Pakistan and elsewhere committed breaches of the constitution! They succeeded because the judges sanctioned their moves. But on every occasion there were also

judges who refused to sanction such unconstitutional moves, and who sacrificed their posts rather than accede; these men rose very high in the nation's estimation. People felt that other judges should have done the same, and that if they had done so no one would have dared to toy with the constitution. (In the time of General Parvez Musharraf, a number of judges agreed not to let the constitution be trampled upon like that, and in the end they were successful.) By the grace of Allah, the Holy Qur'an and the Sunnah form our fundamental constitution. If the people can develop enough religious fervour to protect it, then 'There should be no obedience to a creature that entails disobedience to the Creator' will be the best, most effective approach to peaceful protest.

POLITICAL STRUGGLE AND SELF-REFORM

It must be emphasised that in Islam, gaining power is not the true purpose of political struggle. Its purpose is to gain the pleasure of Allah by reforming the government system to conform with Islamic rules and principles. This does not necessarily require that a certain individual, group or party get into power and make the necessary reforms, if it can be achieved with the present rulers, or any other individual, group or party. This kind of political struggle requires the utmost sincerity in all concerned. They must not seek fame, rank, or wealth. In practice, though, it seems that whenever people engage in such endeavours, their efforts are tainted by desire for popularity, fame, or personal gain. When this happens, the real purpose of political activity is soon forgotten. The questions that come to the fore are how to increase one's popularity, or what kind of activities might enhance one's reputation. As a result, instead of helping people follow the right path, political leaders aim to fulfil their own selfish desires. They tend to base their policies not on what is beneficial for the welfare of the people but on what pleases the public. This is the major flaw in democracy. It has nothing to do with Islamic politics. If one's motivation is not above popularity and fame then all one's efforts are misdirected, and one cannot expect divine support. Hence political leadership needs to be in the hands of those who have undergone spiritual training and left all concern for prestige far behind.

The difficulty is that people who possess those noble traits of character often have a disdain for politics.

Look at the blessed life of Allah's Final Messenger ﷺ. There were two eras: his life in Makkah and his life in Madinah. The thirteen years in Makkah were spent without any form of Jihad, government, or politics. The rule to be followed was to bear all wrongs patiently:

وَاصْبِرْ وَمَا صَبَرْكَ إِلَّا بِاللَّهِ

Endure, and your endurance is only by [the help of] Allah. (16:127)

It was not permissible to raise a hand. Mawlānā Ashraf 'Ali Thānvi رحمۃ اللہ علیہ stated that the reason for the order to endure being wronged patiently and not to strike back was not only that the Muslims were weak at that time. They were weak in Madinah as well. If three hundred and thirteen men with only eight swords and two horses could face an army of one thousand well equipped men, by that reckoning they could have also done something while still in Makkah. They could at least have hit back once, if they themselves were hit twice; but they did not. This shows that the order to be patient was not only due to their weakness. The main purpose was to develop their personalities during those long years, to reform their characters thoroughly, purify their hearts of evils such as love of wealth and prestige, and make them intent on the Hereafter. All this was essential because the field of political affairs is full of pitfalls. Desire for prestige and wealth might cause one to stumble and fall. Hence, emphasis was laid on character-building. Disdain for this world, concern for the Hereafter, piety, and God-consciousness were inculcated in the Muslims' hearts. After their hearts and intentions had been purified, Allah ﷺ deemed them fit to establish an Islamic state, the like of which has never been seen before or since. But the founding of this state was preceded by thirteen years of patient endurance, thirteen years of character-building.

Hence it is of the utmost importance for all those wishing to take part in Islamic politics to undergo some spiritual self-reformation first. A Muslim politician needs to have acquired virtuous traits. He should have purified himself of lust for fame, popularity or lucrative posts in government, or at least learned how to resist such vain desires, so that they not hinder him

in his quest for the goodwill and pleasure of Allah ﷺ. This is the true way to arrive at 'Islamic politics', which cannot be reached without eluding the spiritual robbers that lurk on the way.

یا مکن با چیل بیاں دوستی یا بنائ کن خانہ بر انداز چیل

'Avoid making friends with elephant-drivers
Or else build a home elephantine in size!'

وآخر دعوانا ان الحمد لله رب العالمين

And the ending of our supplication is, "All praise is for the Lord of the Universe."

APPENDICES

THE CONSTITUTION

The majority of nation-states nowadays have a constitution. Keeping in view the political principles of Islam discussed in the foregoing chapters, it is appropriate that the Islamic state should also formulate and implement its constitution, so that these principles may be accessible and clear to everyone. Many of the concepts and principles discussed in the foregoing chapters ought to be integrated into the constitution. Some time ago, I authored two essays: in one I discussed the Qur'anic foundations for a constitution, and in the other I illustrated, with special reference to Pakistan, what the constitution of an Islamic state demands. Both essays are included here in the form of an appendix.

WHAT IS MEANT BY AN ISLAMIC CONSTITUTION?

All praise belongs to Allah, Who brought this world into existence; and His peace and blessings be upon the Last of all Messengers, who upheld the Word of Truth all over the world.

The constitution of a country is the foundation upon which the whole governmental structure rests. The welfare, stability and progress of the country, and the peace and security of its citizens, depend on it. If the foundation is not laid soundly and firmly the whole governmental structure may collapse.

A constitution is a collection of principles according to which the government must operate. This document lays down the basic objectives and policies of the government, and provides answers to all the following questions. What are the rights of the citizens? What forms of authority does

the government have, and what are their limits? How shall a government be formed? By what process shall the parliament or national assembly be formed? What qualifications must the president or head of state, ministers, and members of parliament possess? Who shall appoint or dismiss them? Who shall be responsible for legislation, and to what extent? Under which system shall the courts operate? How and to what extent and can they be immune from political influence? By what criteria shall government servants be appointed? How shall their jobs be apportioned between different parts of the country? How shall the budget be allocated, and for which purposes? What shall be the basic principles when it comes to levying taxes? How shall regional and local governments be formed? What shall be their authority and its limits? In which matters and under what circumstances may the central government override over the regional or local government? How far can the governmental structure be changed in times of war or other states of emergency? What special authorities may the government exercise under such circumstances? The constitution must have answers to all these questions, and the whole government machinery is bound to operate accordingly.

Once a constitution comes into being, the government has to follow it in all of its dealings. If the government takes any steps that are not sanctioned by the constitution, they can be challenged in the Supreme Court. If any paragraphs or clauses contain errors, and the government decides according to them, the people have no way to challenge or rectify its decisions. It is immensely difficult to make changes to a constitution once it has been sanctioned and implemented. Many people in Pakistan will have an idea of these difficulties. They suffered irreparable losses owing to the constitutional changes of 1962, the repercussions of which are felt to this day.

The constitutional drafting that began on 3rd March [1971] is an undertaking that requires minute attention to detail, immense foresight, intelligence and understanding, forbearance, and endless hard work, even though the makers of the constitution are members of the National Assembly. During the days in which the constitution is being redrafted, people should keep themselves informed about every new development. The nation empowered the members of the National Assembly to make the constitution, trusting that they would do so with due consideration for the people's best interests. If that trust is betrayed at any stage, the people

have the right to take their elected representatives to task and to compel them to produce a constitution that accords with their wishes.

It is self-evident that in Pakistan only a constitution that is according to the teachings of Islam will be successful. The President announced this in his legal framework, and during the elections each party acknowledged the importance and need for it, promising that if they came into power they would implement an Islamic constitution in Pakistan. A country founded for the sake of Islam cannot have any but an Islamic constitution. However, the question is how and to what extent will the parties that have gained the majority in the Assembly, and who play an influential role in the drafting of the constitution, fulfil their promise? In today's session, we would like to discuss briefly what is meant by an Islamic constitution and what features are essential to make it worthy of being called one. The public need to be aware of these things in order to be able to develop a clear concept of an Islamic constitution and then decide whether the new constitution is up to the mark, and how far it is acceptable for a Muslim nation.

When we say that Islam gives us guidance for every aspect of life, we do not mean that the even the most minute details are regulated by the rulings contained in the Holy Qur'an, the Sunnah and Islamic *Fiqh*. What we mean is that Islam provides basic principles and injunctions in the light of which the finer details of different ways of life can be decided. Governmental affairs and drafting a constitution are governed by basic principles that cannot be altered by any human being. Even if the whole nation consented to alter any of those principles or to adopt any other stance instead, they would not be able to do so. However, decisions on secondary matters should be based on what the Muslims decide, after due consultation. Islam will not counter any of these decisions, provided they do not violate any of the fundamentals.

In general, the issues covered by the constitution of any country are such that as long as they are according to the basic principles of Islam, they can be settled through mutual consultation. Whatever has been decided in that manner is to be considered permissible from the Islamic point of view. Shall the legislative be unicameral or bicameral? What shall be the country's official language? How many provinces shall there be? What kind of administrative relations shall these provinces have with the central government? How many members shall there be in the legislative and

cabinet? What method should be adopted to check accounts efficiently? Islam has not laid down precise instructions on these matters but has left them to be decided by the *Ummah* itself, after consultation. Whatever the people decide shall be considered valid and practicable from the Islamic point of view.

Nevertheless, there are some basic points, all based on *Āyāt* of the Holy Qur'ān, which cannot be altered by anybody, even through a unanimous decision of the Assembly or a national referendum. If they are not fully taken into account in the constitution, the latter cannot be called Islamic. The fundamental principles that make a constitution Islamic are as follows.

1. Ultimate authority belongs to Allah Alone

إِنَّ الْحُكْمُ إِلَّا لِلَّهِ

Authority belongs only to Allah. (12:40)

This is the primary feature that distinguishes an Islamic constitution from those of secular democracies. Secular democracies declare the people to be the source of power and authority. If the majority of the people decide on something that is not according to the Divine Commandments, they may do so. But in Islam, sovereignty and authority belong to none but Allah ﷺ. Man has the right to govern on Earth as a dutiful representative of Allah ﷺ:

إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً

I am going to create a representative on Earth. (2:30)

This is why man has no right to make any law that does not follow Allah's commandments.

2. A law that goes against the Holy Qur'ān and the Sunnah shall never be accepted. No administrative instruction contravening the Holy Qur'ān or the Sunnah can be given.

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ

And whoever does not decide according to what Allah has revealed, they are infidels. (5:44)

3. The basic objectives of a government are to establish justice and equality, to counter internal and external forms of mischief, to set up places of worship for the Muslims, to call the people towards virtue, and to keep them away from vice.

الَّذِينَ إِنْ مَكَّنَاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ وَأَمْرُوا بِالْمَعْرُوفِ وَنَهَوْا
عَنِ الْمُنْكَرِ

Those who, if We grant them power on Earth, establish the prayer, pay the Zakat, enjoin goodness and forbid evil. (22:41)

وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

And when you decide between people, decide in justice. (4:58)

وَلَوْلَا دَفَعَ اللَّهُ النَّاسَ بَعْضَهُمْ بِعَضًا لَفَسَدَتِ الْأَرْضُ

And if Allah did not ward off some people through others, there would indeed be corruption on earth. (2:251)

4. All governmental posts and national assets are a trust in the hands of those who hold them. It is the responsibility of the government to make over this trust to those who are entitled to it.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤْدُوا الْأَمَانَاتِ إِلَى أَهْلِهَا

Allah commands you to restore trusts to their owners. (4:58)

5. Government is not supposed to be a dictatorship. Matters are to be decided in consultation with the public.

وَأَمْرُهُمْ شُورَى بَيْنَهُمْ

Their affairs are [decided after] consultation amongst themselves. (42:38)

6. The nation shall be founded on unity between the people. To achieve this, the Muslims must overcome geographical, racial, tribal, lingual, and other kinds of un-Islamic bias and prejudice. The government must work to unite the Muslims and establish social equality among them.

إِنَّا مُؤْمِنُونَ إِخْوَةٌ

The believers are brethren, nothing less. (49:10)

وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاَكُمْ

We have made you groups and tribes so that you may recognise one another. The noblest of you in the sight of Allah is the most pious of you. (49:13)

7. The head of the state must be a righteous Muslim. He must have the attributes of Islamic knowledge and living in an Islamic manner.

لَا يَنَالُ عَهْدِ الظَّالِمِينَ

My Covenant does not extend to wrongdoers. (2:124)

إِنَّ اللَّهَ اصْطَفَاهُ عَلَيْكُمْ وَرَأَدَهُ بَسْطَةً فِي الْعِلْمِ وَالْجَسْمِ

Allah has chosen to put him over you, and has given him greater knowledge and bodily strength. (2:247)

8. All citizens shall be guaranteed their basic human rights, which include protection of life, wealth, and honour, freedom of religion, the right to assemble for righteous purposes, and the right to voice constructive criticism.

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَمَ اللَّهُ إِلَّا بِالْحَقِّ

And do not kill a soul that Allah has made sacrosanct except with right [to do so]. (17:33)

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ

And do not devour your wealth between yourselves wrongfully. (2:188)

لَا يَسْخِرُ قَوْمٌ مِنْ قَوْمٍ

Let not one people deride another. (49:11)

لَا إِكْرَاهٌ فِي الدِّينِ

There is [to be] no compulsion in religion. (2:256)

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ

Let there be among you a group that calls [people] towards goodness. (3:104)

كُنُّمْ خَيْرُ أُمَّةٍ أَخْرَجْتَ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَنَهَيْتُمْ عَنِ الْمُنْكَرِ

You have been the best *Ummah* brought forth for mankind, enjoining goodness and forbidding what is evil. (3:110)

9. No one is to be punished unless their crime is proven.

إِنْ جَاءَكُمْ فَاسِقٌ بِنَيَّابَتِيْبُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَىٰ مَا فَعَلُّتُمْ
نَادِمِينَ

When an evildoer comes to you with news then verify it, lest you ignorantly afflict a people and then regret what you have done. (49:6)

10. The judiciary shall fulfil the demands of justice, without being put under pressure by anyone or anything. It shall not accept any kind of interference, unless it be from the laws contained in the Holy *Shari'ah*.

كُونُوا قَوَامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَا عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالْأَقْرَبِينَ

Be staunch in justice, witnesses for Allah, even if it be against yourselves or [your] parents or near of kin. (4:135)

فَاحْكُمْ بِمِنْهُمْ مِمَّا أَنْزَلَ اللَّهُ ۚ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ

So judge between them according to what Allah has sent down to you, and do not follow their desires. (5:48)

11. It is the government's responsibility to arrange for the sustenance of the poor, the physically handicapped, and those otherwise deprived of

their own source of income. The government shall divide communal assets justly so that all citizens can benefit therefrom, and to ensure that it does not accumulate in the hands of the rich.

مَا أَفَاءَ اللَّهُ عَلَىٰ رَسُولِهِ مِنْ أَهْلِ الْقُرْبَىٰ فَلَلَّهِ وَلِرَسُولِهِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَإِنِّي أَنَا أَسْبِلُ كَيْفَ لَا يَكُونُ دُولَةٌ بَيْنَ الْأَغْنِيَاءِ مِنْنِّي

That which Allah gives as spoils to His Messenger from the people of the townships is for Allah, the Messenger, and the near of kin and the orphans and the needy and the wayfarer, so that it does not become a commodity between the rich among you. (59:7)

وَفِي أُمُوَالِهِمْ حَقٌّ لِلْسَّاَبِلِ وَالْمَحْرُومِ

And in their wealth there is a right for the beggar and the deprived. (51:19)

12. Individual property that has been acquired in a lawful way must not be seized unjustly

لَا تَأْكُلُوا أُمُوَالَكُمْ بَيْتَكُمْ بِالْبَاطِلِ

Do not consume one another's properties wrongfully. (2:188)

13. The people must not be burdened with any tax that they cannot bear, or be ordered to do anything beyond their capacity.

وَيَضْعُ عَنْهُمْ إِضْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ

And he removes their burden and the yokes that were upon them. (7:157)

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

Allah does not burden a soul except with what it can bear. (2:286)

14. The government must provide for the education and moral training of the people so that they may be aware of the fundamental Qur'anic and Islamic teachings and live their lives in an Islamic manner. The government must also promote first-class economy-related education, so the nation may be financially independent.¹

وَيُعَلِّمُهُمُ الْكِتَابَ وَالْحِكْمَةَ

And he [the Holy Prophet] teaches them the Scripture and Wisdom. (2:129)

15. Non-Muslim citizens of an Islamic state (provided they are not apostates) shall have basically the same human rights as Muslim citizens.

وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيشَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ

And if he (i.e. someone killed accidentally or by mistake) is from a people between whom and yourselves there is a truce¹, *Diyah* (blood money) shall be given to his family. (4:92)

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُهُودِ

O you who believe, fulfil [your] covenants. (5:1)

16. The duty of Jihad shall be fulfilled according to the Islamic rules and regulations.

وَجَاهَدُوا فِي اللَّهِ حَقَّ جِهَادِهِ

Strive in [the path of] Allah as is His right. (22:78)

17. The government is to maintain good relations with such non-Muslim nations as are not antagonistic towards the Muslims.

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Allah does not forbid you to treat well and justly those who have not fought you in matters of religion or driven you out from your lands. Allah loves those who act justly. (60:8)

18. Covenants and treaties that have been concluded with other countries and are permissible from the Shar'i point of view must be fulfilled. Otherwise, the end of the treaty must be clearly announced.

¹ See appendix for article on establishing a fair economic system.

¹ That is, a *dhimmi*.

إِلَّا الَّذِينَ عَاهَدْتُم مِّنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُضُوكُمْ شَيْئًا وَلَمْ يُظَاهِرُوا عَلَيْكُمْ أَحَدًا فَأَتَمُوا إِلَيْهِمْ عَهْدَهُمْ إِلَى مُدَّتِهِمْ

Except for those with whom you have a treaty from among the idolators, and who then have not fallen short in fulfilling [the treaty] with you, and have not rounded up against you. So fulfil your treaty with them until the end of its term. (9:4)

وَإِمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ

And if you fear treachery from a people, cast back their covenant to them fairly. (8:58)

19. Non-Muslims are not to be given any key positions in the government that could acquaint them with the secret intentions of the Islamic state.

لَا تَتَخِذُوا بِطَانَةً مِّنْ دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا

Do not take close friends among others who spare no effort to ruin you. (3:118)

20. Those points of the constitution that are taken directly from the Holy Qur'an and the Sunnah cannot be altered in any way.

وَتَمَّتْ كَلِمَتُ رَبِّكَ صِدْقًا وَعَدْلًا لَا مُبَدِّلَ لِكَلِمَاتِهِ

Perfect is the Word of Your Lord in truth and justice. Naught can change His Words. (6:115)

These are the fundamental points without which a constitution cannot be considered Islamic. For the sake of brevity, we have contended ourselves with citing only *Āyāt* from the Holy Qur'an to substantiate the correctness of the above points. These points, however, are also to be found in Hadiths, in a more detailed, explanatory manner. It was the Holy Prophet ﷺ himself who had the first constitution of the newly established Islamic state in Madīnah put into writing. This constitution, which comprised forty-seven clauses, spelled out the rights which the new government granted its Muslim

and non-Muslim subjects. The renowned biographer of the Holy Prophet ﷺ, Ibn Hishām, cited it in full in his *Sīrah*.

The next stage is to explain how the above points can be practically integrated into the constitution. What practical steps can be taken to make the new constitution an Islamic one? To discuss this in detail, however, would require more space than can be available in a single issue of *Al-Balāgh*. These details will therefore be discussed in a later issue, inshallah.

وَالْأَمْرُ بِدِلْلَهِ تَعَالَى

'And the matter is [entirely] in the Hands of Allah Most High.'

MUHAMMAD TAQI USMANI

20th December, 1990
(Al-Balāgh, Muharram 1391)

THE ISLAMIC CLAUSES OF THE CONSTITUTION

All praise belongs to Allah ﷺ who has brought this world into existence. His peace and blessings be upon the Last of all Messengers, who elevated the Word of Truth all over the world.

In the last edition (the Muharram issue of *Al-Balagh*—translator) we discussed the basic features of an Islamic constitution. We also promised to provide in the Safar issue some practical recommendations by which these features could be integrated into the constitution. While writing the editorial for the last issue, I had no idea how great a crisis our country was passing through. Even now, conditions seem to change by the hour. With that in view, it is difficult to say in what situation we shall find ourselves by the time our dear readers are reading these lines. After deferring the meeting scheduled for 3rd March, the National Assembly decided to meet on 25th March instead. It is difficult to say why this meeting is to be held, or how many MNAs (Members of the National Assembly—tr.) will attend it.

In view of the conditions which our country currently faces, no one can tell whether there will be a chance to discuss the fundamental issues concerning the constitution, or for how long those holding the reins of the National Assembly will continue to toy with the people's fate. But since we have taken up the topic, it seems only appropriate to bring it to a conclusion as well.

We have already shown that there are many constitutional issues regarding which Islam has not given any precise formula. Decisions on those matters has been left to the Muslim *Ummah*. Whatever conclusion its members may arrive at after mutual consultation, it will not affect the Islamic status of the constitution. However, on those matters for which Islam has provided clear and definite guidelines they must be strictly adhered to; and unless

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this is done with full attention to the following points, our constitution cannot be called Islamic.

1. The Preamble which was passed by the Constitution-Making Assembly in 1951, and included in various later constitutional drafts, ought to be made an essential part of the Constitution since it defines the basic direction of state policies. Furthermore, this Preamble states explicitly that ultimate sovereignty belongs to Allah ﷺ, and that elected representatives may only exercise their own authority within the limits set by Allah Most High through the Holy Qur'an and the Sunnah. It should be clearly stated in the constitution that any laws or governmental actions that contravene the constitutional objectives are open to being challenged in the Supreme Court.
2. The second stage in the constitution-making process is to define the correct principles of legislation. The constitution should fully guarantee that in this country no law or administrative regulation can be passed that is against the Holy Qur'an or the Sunnah, and that any existing laws that do not conform to the Holy Qur'an and the Sunnah must be exchanged for Islamic laws.

However, the experience of the past twenty-three years has shown that those groups who are bent on eliminating Islam in Pakistan do not consider the full implementation of Islamic laws in their interest. They openly say that the state law is not to be Islamised. They always try to keep loopholes in the constitution. Their policy is to maintain Islam in name, while at the same time ensuring that it has no practical impact on life. The result is that the term 'Islam' is used to suit their whims and fancies, and nothing else. To eliminate these 'loopholes' in the constitution requires the following measures.

- a. In 1952, the Constitution-Making Assembly stated in its report on fundamental principles that the laws of the country were to be moulded according to the Holy Qur'an and the Sunnah. Since no deadline was mentioned, however, there was ample scope to defer any remedial action matter indefinitely. The consequence was that for a very long time Islamic laws were not implemented. In order to close this loophole, an appropriate time limit must be set for enacting laws that accord with the requirements of Islam, which should under no circumstances exceed

five years. Given sincere efforts by those concerned, that ought to be more than enough time.

- b. The Constitution of 1962 originally contained the words 'Qur'an and Sunnah', but these were then struck off and replaced with the term 'Islam' – meaning that there shall be no law that is not in accordance with Islam. This may have appeared a very minor and harmless alteration, but behind it operated a very dangerous mindset. In Pakistan, there was a tiny group of people who refused to consider the Sacred Hadiths or the Sunnah of Allah's Final Messenger ﷺ as a valid source of Islamic legislation. This group was an offshoot of a larger group who were completely in awe of the West. Instead of the true spirit, this group wanted to use merely the name of Islam. Their aim was to reinterpret Islam in a way that would allow them to follow all their whims and fancies and ensure that Islam would not obstruct their efforts to promote Western views. This objective could hardly be achieved without rejecting those of the Holy Prophet's ﷺ statements that are considered the perfect and complete interpretation of the Holy Qur'an, and thanks to which the Qur'an was saved from alteration and interpolation. This group consequently refused to acknowledge the Sunnah as a source of legislation and attempted to achieve their objectives through their own capricious interpretations of the Qur'an. The reason for using the word 'Islam' instead of 'Qur'an and Sunnah' in the constitution of 1962 was to allow scope for the above-mentioned speculations. It is therefore of the utmost importance that the new constitution clearly state 'Qur'an and Sunnah'.
- c. Some constitutional drafts specified that there could be no law that contradicts the Holy Qur'an and the Sunnah; but there was no assurance that any existing laws not in accord with the Holy Qur'an and the Sunnah would be replaced with laws that are not foreign to Islam. The new constitution must be clear on both points.
- d. In some constitutional drafts it appeared that the condition concerning Qur'an and Sunnah was intended as no more than a moral guideline, and that the 'Islamic' status of any un-Islamic law passed by the Assembly could not be challenged in court. Under such circumstances this clause would in practice be completely ineffective. No matter how carefully this clause might be phrased it could not guarantee the least protection

against un-Islamic laws. The constitution must therefore specify that if the Assembly passes any law that goes against the Holy Qur'an and the Sunnah, that law may be challenged in the Supreme Court and may be amended or abrogated accordingly.

- e. Some constitutional drafts did consider the above points, yet there was a fundamental flaw: nowhere in the constitution were any criteria or reliable procedures established through which it could be decided whether or not a law conforms to the Holy Qur'an and the Sunnah. These drafts suggested that the decision be left to the Supreme Court. In principle, there is nothing wrong with this proceeding. The practical difficulty, however, is that the judges in the Supreme Court need to have a sufficiently deep and broad knowledge of the Qur'an and the Sunnah in order to be qualified to arrive at such a decision. Unfortunately, there is a great deficiency in this regard. The Supreme Court judges are all either completely ignorant in this respect, or at best have only a very superficial knowledge. To derive laws from the Holy Qur'an and the Sunnah is a difficult task and a weighty responsibility, and to do so one must be thoroughly acquainted with the Arabic language and literature, *Tafsīr*, Hadith, *'Ilm al-rijāl* (the science of assessing Hadith narrators), *Fiqh*, *Kalām*, and several others. This task can be fulfilled only by people who have dedicated years of their lives to acquiring this kind of knowledge.

If one looks at the present judges, one will find that hardly any of them are acquainted with Arabic or know about the Holy Qur'an and the Hadiths, or the principles by which to derive any law from the Islamic sources of legislation. That being so, obviously, their decision as to whether or not a law accords with the Holy Qur'an and the Sunnah can hardly be considered reliable.

The constitution should guarantee that such decisions shall be made by Islamic scholars who have studied the Holy Qur'an and the Sacred Hadiths in depth, are well-versed in Fiqh, and are considered by the people to be pious and righteous. The best practical solution for this arose in 1953, when thirty-three scholars from different schools of thought presented some constitutional recommendations on which they had all agreed. At present there should be a special bench in the

Supreme Court which comprises one regular judge of the Supreme Court as well as five or six renowned Islamic scholars.

- f. Another major objective related to the codification of Islamic laws is to set up a commission to revise in those five years the present laws, and to amend them so as to make them accord with the Holy Qur'an and the Sunnah. Between the establishment of Pakistan and the present day, the government has set up several such bodies, like the Law Commission, the Marriage Commission, the Islamic Advisory Council, and the Institution of Islamic Research. However, the experience of the past twenty-three years has shown that all these institutions have not only failed to realise their objectives; what is worse, they have given rise to mutual differences and confusion and not earned the least degree of public trust.

The reason for this is that the people did not consider the Islamic knowledge or practice of many majority that had been elected into these commissions to be reliable. The work of these commissions consisted, basically, in interpreting the Holy Qur'an and the Sunnah. This can be done only by people who have spent the major part of their lives acquiring and propagating knowledge about the Holy Qur'an and the Sunnah, and who know from practical experience the delicacy of the task. This fact has always been ignored whenever a body was set up in the past 23 years. As a result, despite huge sums of public money were spent, no progress has been made in the desired direction. Hence it needs to be laid down exactly which criteria the commission members responsible for the systematisation of Islamic laws in the new constitution must fulfil, so that there be no difficulty in this regard.

Apart from considering the above six points, the clauses concerning Islamic constitution-making in the new constitution should be phrased as follows:

1. There shall be no legislation that contravenes the Holy Qur'an and the Sunnah, and the present laws shall be amended to fulfil the requirements of the Holy Qur'an and the Sunnah, following the method set out in Article 2.
2. In compliance with article 1, the Head of State is to form an Islamic Legal Commission within six months of the new constitution being

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2. In compliance with article 1, the Head of State is to form an Islamic Legal Commission within six months of the new constitution being

passed. This Commission shall comprise members belonging to every acknowledged Islamic school of thought in the country.

3. Two-thirds of the Islamic Legal Commission members must be Islamic scholars who:
 - a. Have worked at least ten years as Mufti for any renowned institution, or;
 - b. Have issued Fatwas in any Muslim territory for at least ten years, or;
 - c. Have served at least ten years in the field of *Shar'i Qadā'* (juristic magistracy) as a regular *Qādī*, or;
 - d. Have taught at least ten years *Tafsīr*, *Hadith*, and *Fiqh* in any recognized institution of Islamic learning. (Note: in 1953, thirty three scholars from different schools of thought established these criteria during a conference held in Karachi to consider the constitutional recommendations.)
4. The remaining third of the membership of the Islamic Legal Commission is to comprise legal experts who:
 - a. Have acted for at least five consecutive years as judge in the same High Court, or five consecutive years as judge in two or more different High Courts, or;
 - b. Have acted for at least fifteen consecutive years as advocate to the same High Court, or two or more different High Courts.
5. It would be appropriate for the Head of the State to approach all religious and political parties, requesting them to nominate members for the Islamic Legal Commission, before appointing them. Especially those people should not be overlooked whose names are commonly mentioned in the suggestions. However, this shall not apply in cases where those candidates do not meet the criteria laid down in article 3 and 4.
6. The Islamic Legal Commission shall, within five years of its establishment, codify the Islamic injunctions in an appropriate manner. After the Commission's report, whether provisional or final, has been received, it shall be submitted to the National Assembly, and the Assembly shall pass it as law within six months at most.
7. Any objections concerning the interpretation of the Holy Qur'an and the Sunnah, pursuant to article 1 of this clause, that may arise with regard to laws enacted by the legislating Assembly, shall be finally and

categorically decided by the special bench of the Supreme Court appointed by the Head of State for this specific purpose and comprising at least five religious scholars.

8. The special bench of the Supreme Court specified in article 7 shall comprise only scholars who fully meet the criteria listed in Article 3. The proposed rules and regulations concerning regular judges shall apply also to these scholar-judges.

Elucidation:

1. In line with the application of this clause, with regard to personal laws, an interpretation of the Holy Qur'an and Sunnah that is peculiar to any acknowledged sect or school of thought shall be taken into consideration.

2. No such interpretation of the Holy Qur'an and the Sunnah shall be admitted if it contravenes the juristic interpretations of all acknowledged schools of thought. Any such interpretation shall be considered as interdicted to the extent of the contravention. The condition of abiding by the Qur'an and Sunnah during the law-making process can bring results only if the above details are included in the constitution. If these essential points are neglected this time, as they were in the past, the expression 'Qur'an and Sunnah' will be as devoid of spirit as it was in the past, and the dream of developing an Islamic society will remain unrealised.

3. The third important point concerning the Islamic status of the constitution is that the constitution should warrant that the Head of State (i.e. the President) and the Prime Minister are Muslims. The condition that the President be a Muslim has been accepted in all previous constitutional drafts. However, no such condition has been laid down for the Prime Minister; but if this condition has been accepted for the President, why should it not be laid down for the Prime Minister as well? There is all the more reason, since in a parliamentary system it is the Prime Minister who runs the government.

4. The above three points were deemed important enough to be mentioned separately. As for the remaining clauses of the constitution that are important from the Islamic point of view, it suffices to state that in 1951, thirty-one representatives of each school of thought held a conference at which they compiled twenty-two points which must be duly considered

in an Islamic constitution and upon which the new constitution ought to be based. These points will be published in this issue of *Al Balagh*. Any clause that contravenes them shall be considered un-Islamic. The present four points are essential if the new constitution is to be Islamic. With them in view, any Muslim can now understand what is meant by an 'Islamic Constitution'. This is the criterion by which to decide to what extent the new constitution can be considered Islamic or un-Islamic.

This detailed discussion should have made it clear that an 'Islamic Constitution' is neither the ogre of which some elements are so afraid, nor impracticable and hence irrelevant to this age. The sincerely intended inclusion of a few clauses in the constitution would suffice to make it worthy to be called an 'Islamic Constitution'. As for the remaining, mainly administrative, matters, the elected assembly has full freedom to decide on them after due consultation as to what is most beneficial for the nation. If anyone remains who refuses to include these few truly Islamic clauses in the constitution, at best it can only mean that he wants to use the name 'Islam' for his own ends, without having the least intention of making a real Islamic system.

If the present Constitution-Making Assembly duly considers these few points it will have endeared itself to the Muslims. The people of this country would gladly forget all former hardship and lend its full support to such an Assembly. But if those Members of the National Assembly who before their election never grew tired of talking about Islam will not even render this small service to uphold the Holy Qur'an and the Sunnah, the people's trust in them will be shaken. In that event, a few impressive-sounding words will not suffice to soothe the restlessness of a people who have had to dethrone a couple of dictators in the recent past.

وَمَا عَلِيَّ إِلَّا الْبَلَاغُ

MUHAMMAD TAQI USMANI
(*Al Balagh*, Safar 1391)

BASIC PRINCIPLES OF AN ISLAMIC STATE

TWENTY-TWO POINTS, LAID DOWN BY THIRTY-
ONE SCHOLARS, ON WHICH MEMBERS OF ALL
RECOGNISED ISLAMIC SECTS ARE AGREED

The Constitution of an Islamic State must unambiguously uphold the following principles:

1. Allah Most High is the True Ruler, universally and as Legislator.
2. The law of the state shall be based on the Holy Qur'an and the Sunnah. No law or administrative order can be passed that does not accord with the Qur'an and Sunnah.
- (Note: If there are any laws in a country that are not in accordance with the Holy Qur'an and the Sunnah, there should be a clause to the effect that they must all be abrogated within a given time limit, or be amended according to the rulings of the Holy *Shari'ah*.)
3. The state shall not be founded on any geographic, racial, lingual or similar basis, but on principles and objectives that are rooted in Islamic ideals and values.
4. It shall be the duty of the government to implement all that is deemed good and righteous by the Holy Qur'an and the Sunnah; to eradicate all kinds of vice; to keep Islamic identity alive and prevalent; and to make adequate arrangements for the religious education of all recognised Islamic sects, according to their requirements.
5. It is the duty of an Islamic government to foster brotherly relations between the Muslims of the world, and to prevent anything that might cause a rift between Muslim citizens of the state as a result of racial,

lingual, material, or territorial bias. The government must always strive to strengthen, maintain and protect Muslim unity.

6. The government must provide all citizens, regardless of ethnicity or creed, with access to the basic necessities of life—food, clothing, shelter, medical treatment, and education—and subsidise them for citizens who are unable to earn a living for themselves either permanently, owing to old age or disability, or temporarily owing to illness or being unable to find employment.
7. The residents of the state shall enjoy all the rights accorded them by the Holy *Shari'ah*, within the limits of law: protection of life, wealth and honour; freedom to follow any religion or school of thought, freedom of worship, individual freedom, freedom of opinion, freedom to move and to assemble, freedom to earn a living, the right to equality in making progress, and the right to access welfare institutions.
8. The above-mentioned rights cannot be seized from any citizen unless Islamic law has sanctioned any such seizure. If a citizen is suspected of having committed a crime, they cannot be punished without being given the opportunity to defend themselves and without a proper verdict from an authorised Court of Law.
9. The recognised Islamic sects shall have the freedom (within the limits of the law) to religious practice according to their own school of thought. They shall have the right to impart religious education to their followers, and freedom to publish their teachings. Their personal affairs shall be decided according to their juristic school of thought. There must be arrangements to have a *Qadī* of their own school of thought pass such verdicts.
10. Non-Muslim citizens shall have religious freedom within the limits of the law. They shall have the right to worship and to religious and cultural education and be free to decide their personal affairs according to their own religious teachings, customs, or *mores*.
11. Any agreements with non-Muslim subjects of the state concluded within the bounds of the Holy *Shari'ah* must be fulfilled. Non-Muslim subjects have the same claim as Muslim subjects to the civic rights listed in Clause 7.
12. The Head of State must be a male Pakistani citizen whose religiousness,

rectitude, abilities and judgement the majority of people or their representatives consider reliable.

13. The Head of the State shall be responsible for the management of state affairs. He may, however, transfer some of his authorities to a person or group of his own choice.
14. The government shall not be autocratic. It shall be based on consultation, which means that he shall fulfil his duty after consulting other governmental officers as well as the elected representatives of the people.
15. The Head of the State shall not have the right to dispense with the constitution, whether wholly or partially, and to start ruling on his own without consultation.
16. The group or party that elected the Head of State shall also have the right to dismiss him by a simple majority vote.
17. The Head of the State shall have the same civic rights and obligations as any ordinary Muslim. He shall not be 'above the law'.
18. The same laws shall apply to members of the government, employees of the government and common citizens. Common courts shall enforce these laws on them.
19. The judiciary shall be free and independent from the Executive, so that the judiciary shall in no way be influenced by the Executive in fulfilling their duties.
20. It shall be forbidden to broadcast or publish any ideas that are contrary to the founding principles of the Islamic state.
21. The different provinces and regions of the state shall be considered as administrative divisions of a single state. They shall not be based on racial, lingual or tribal identity or interest. Their purpose shall be to facilitate administrative matters. They shall have administrative authority in numerous matters but shall still be subject to the central government. They shall have no right to independence from the central government.
22. Any interpretation of the constitution that is contrary to the Holy Qur'an and the Sunnah shall not be considered valid or reliable.

ESTABLISHING A FAIR ECONOMIC SYSTEM

The sixth objective of an Islamic government is to establish an economic system that fulfils people's needs in a well-balanced, just manner so as to promote improvement in the general standard of living, bridging the gap between rich and poor. The basis for this is Allah's ﷺ saying:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرْبَىٰ فَلِلَّهِ وَلِرَسُولِهِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ
وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

That which Allah gives as spoils (*fay'*) to His Messenger from the people of the townships is for Allah and His Messenger, and for the near of kin, orphans, the needy and wayfarers, so that it becomes not a commodity between the rich among you. (59:7)

Islam based all regulations pertaining to commercial activities on this principle, which provides all members of a society with equal opportunities to make their living. Similarly, Islam has closed all ways leading to hoarding and monopolisation; this is to avoid wealth accumulating in the hands of few and preventing its equitable distribution. This is the very reason why Islam has forbidden transactions based on interest or speculation, and those based on uncertainties. However, we cannot delve into the details of that subject in this book. The present writer has discussed them in a number of papers and articles¹.

If, despite the enforcement of such laws and regulations, the living standard of some people continues to be low, their needs can be met by

¹ See *Takmilat Fath al-mulhim*, beginning of *Kitāb al-Buyū'* vol. 1, p. 197 (Damascus: Dār al-Qalam, n.d.) and *Islām awr jaded ma'ishat o tijārat*, and *Causes and remedies of financial crisis from Islamic perspective*. The latter has been translated into Urdu and Arabic. See also the books by the author's late and respected father, *Islām kā niżām-i taqṣīm-i dawlat* (Islam and the ordering of governance) (Karachi: Idārat al-Ma'ārif), and *Jawāhir al-fiqh* (Jewels of jurisprudence), vol. 3: 437 (Karachi: Maktabat Dār al-'Ulūm, 2010).

zakat and other forms of charity. If the rulings pertaining to the payment of zakat were enforced on the whole of society, this would be an immense contributing factor towards eliminating poverty, as it was in the days of the Righteous Caliphs. A few examples will follow, to illustrate this point.

On the other hand, the teachings of Islam clearly state that the purpose of zakat and *sadaqah* is not to support a class of people who would rest content with maintaining themselves through charity, by holding out their begging bowls and thus becoming a burden on others. The Messenger of Allah ﷺ nipped this notion in the bud by saying:

لَا تَحْلِ الصَّدَقَةُ لِذِي مَرْأَةِ سَوِيٍّ.¹

‘[Receiving] *sadaqah* is not lawful for healthy people who are able to earn a living.’

The Holy Prophet ﷺ further said:

لَا يَأْخُذُ أَحَدُكُمْ حَبْلَهُ، فَيَأْتِي بِحَزْمَةِ حَطْبٍ عَلَيْهِ ظَهِيرَهُ، فَيَبْيَعُهَا، فَيَكْفِي اللَّهُ بِهَا
وَجْهَهُ، خَيْرُهُ مِنْ أَنْ أَسْأَلَ النَّاسَ، أَعْطُوهُ أَوْ مَنْعُوهُ.²

‘For any of you to take his rope, bring wood on his back, and sell it, so that Allah thereby saves his face [from the shame of begging] is better than for him to ask from people who might give to him or refuse him.’

The Messenger of Allah ﷺ gave a practical example of this teaching. Imam Abū Dāwūd recorded the following incident³:

أَنَّ رَجُلًا مِنَ الْأَنْصَارِ أتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْأَلُهُ فَقَالَ «أَمَا فِي بَيْتِكَ
شَيْءٌ». قَالَ بَلَى حِلْسُ نَلْبِسُ بَعْضَهُ وَبَسْطُ بَعْضَهُ وَقَعْدٌ نَشَرِبُ فِيهِ مِنَ الْمَاءِ. قَالَ
«أَنْتَنِي بِهِمَا». فَأَتَاهُ بِهِمَا فَأَخْذَهُمَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِيَدِهِ وَقَالَ «مَنْ
يَشْتَرِي هَذِينَ». قَالَ رَجُلٌ أَنَا آخُذُهُمَا بِدِرْهَمٍ. قَالَ «مَنْ يَزِيدُ عَلَى دِرْهَمٍ». مَرَّتِينَ
أَوْ ثَلَاثَةَ قَالَ رَجُلٌ أَنَا آخُذُهُمَا بِدِرْهَمَيْنِ. فَأَعْطَاهُمَا إِيَاهُ وَآخَذَ الدِّرْهَمَيْنِ وَأَعْطَاهُمَا

¹ Narrated by al-Nasā’ī from Abū Hurayra as in Ibn al-Athīr, *Jāmi’ al-uṣūl* (Hadith 2755); and by al-Tirmidhī from ‘Abd Allāh ibn ‘Amr (Hadith 2754, classed as *ḥasan*).

² Narrated by al-Bukhārī from al-Zubayr ibn al-‘Awām: *Kitāb al-Zakāt*, Hadith 1471; Hadith 1470, from Abū Sa‘id al-Khudrī, is similar.

³ Abū Dāwūd, *Sunan*, *Kitāb al-Zakāt*, Hadith 1640; *Bāb Mā tajūz fih al-mas’ala*. Also narrated, according to al-Mundhiri’s *Takhlīṣ*, by al-Tirmidhī (as *ḥasan*), al-Nasā’ī, and Ibn Mājah.

الْأَنْصَارِيٌّ وَقَالَ «أَشْتَرِي بِأَحَدِهِمَا طَعَامًا فَأَنْذِهُ إِلَى أَهْلِكَ وَأَشْتَرِي بِالْأَخْرَ قَدُومًا فَأَتَيْتُ
بِهِ». فَأَتَاهُ بِهِ فَشَدَّ فِيهِ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عُودًا بِيَدِهِ ثُمَّ قَالَ لَهُ «اذْهَبْ
فَاحْتَطِبْ وَيَعْ وَلَا أَرِينَكَ خَمْسَةَ عَشَرَ يَوْمًا». فَذَهَبَ الرَّجُلُ يَحْتَطِبْ وَيَبْيَعُ فَجَاءَ
وَقَدْ أَصَابَ عَشَرَةَ دَرَاهِمَ فَأَشْتَرَى بِيَعْضِهَا ثَوْبًا وَبِيَعْضِهَا طَعَامًا. فَقَالَ رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ «هَذَا خَيْرٌ لَكَ مِنْ أَنْ تَجِيَ الْمَسَأَلَةُ نُكْتَةً فِي وَجْهِكَ يَوْمَ
الْقِيَامَةِ إِنَّ الْمَسَأَلَةَ لَا تَصْلُحُ إِلَّا لِثَلَاثَةِ لِذِي فَقْرٍ مُدْعِيٍّ أَوْ لِذِي غُرْمٍ مُفْطِعٍ أَوْ لِذِي
دَمٍ مُوجِعٍ».

A man of the Ansār came to the Prophet ﷺ and begged from him. He (the Holy Prophet ﷺ) asked: Do you not have anything in your house? [The man] replied: ‘Yes: a piece of cloth, part of which we wear and part of which we spread (on the ground), and a wooden bowl from which we drink water.’ He said: ‘Bring them to me.’ He then brought these articles to him, and he (the Holy Prophet ﷺ) took them in his hands and asked: ‘Who will buy these?’ A man said: ‘I will buy them for one dirham.’ He said twice or thrice: ‘Who will offer more than one dirham?’ A man said: ‘I will buy them for two dirhams.’ He gave these to him and took the two dirhams and, giving them to the Ansārī, he said: ‘Buy food with one of them and hand it to your family, and buy an axe and bring it to me.’ [The man] then brought it to him. The Messenger of Allah ﷺ fixed a handle on it with his own hands and said: ‘Go, gather firewood and sell it, and let me not see you for a fortnight.’ The man went away and gathered firewood and sold it. When he had earned ten dirhams, he came to him and bought a garment with some of them and food with the others. The Messenger of Allah ﷺ then said: ‘This is better for you than for begging to come as a spot on your face on the Day of Resurrection. Begging is right only for three people: one who is in grinding poverty, one who is seriously in debt, or one who is responsible for compensation¹ and finds it difficult to pay.’

In short, on one side, the Messenger of Allah ﷺ ordered people to pay

¹ According to the commentary by ‘Allāmah al-‘Aynī *ra*, this refers to a person who, to avoid mutual fighting and unjustifiable bloodshed, offers to pay some form of compensation but is then unable to do so, for which reason his own life is in danger. (*Sharḥ al-‘Aynī ‘alā Sunan Abī Dāwūd*, vol. 6, p. 389).

zakat and encouraged them to give *ṣadaqah*, while at the same time urging them to work for their livelihood and not to depend on the charity of others. Not only that, he ﷺ even provided some people with lawful means of earning their livelihood.

Furthermore, the Messenger of Allah ﷺ publically announced that if in spite of all those measures there remained still some people who were not in a position to earn for themselves, their needs were to be provided for by the *Bayt al-Māl* (public treasury). He said:

من ترك مالاً فلورثه ومن ترك كلّاً فعليها.

'If anyone leaves wealth it belongs to his heirs; and if anyone leaves dependants, [they are] our [responsibility].'¹

Another *Hadīth* states:

و من ترك كلّاً أو ضياعاً فأنا وليه فالأدعى له

'And whoever leaves a dependant, I shall be their guardian (*wali*) and will be called on his account.'²

The Rightly Guided Caliphs ﷺ implemented these guidelines. The *Bayt al-Māl* provided for those who were unable to earn their living owing to old age or disability. Sayyidunā 'Umar ibn al-Khaṭṭāb ﷺ maintained a complete record of allowances which stated how much was to be paid to the families of soldiers to meet their needs from the time their menfolk went off to war until their return. The historian al-Balādhurī ﷺ gives details concerning these grants, which were fixed according to the recipient's degree of closeness to the Holy Prophet ﷺ as well as to the recipient's services. Those who were not able to fight, were given daily allowances. Al-Balādhurī related the following from him, citing his chain of transmission (*sanad*) down to Hāritha ibn al-Mudharrib:

أن عمر بن الخطاب أمر بجريب من طعام فعجن ثم خبز ثم برد ثم دعا بثلاثين رجالاً فأكلوا منه غدائهم حتى أصدر لهم ثم فعل بالعشي مثل ذلك فقال يكفي الرجل جريباً كل شهر فكان يرزق الناس الرجل والمرأة والمملوك جريبي كل شهر.

¹ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Janā'iz*, *Bāb al-Ṣalāh 'alā man taraka daynan*; Hadith 2268, from Abū Hurayra.

² al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Farā'īd*, *Bāb Ibnay 'am aḥaduhumā*, etc.; Hadith 6364.

'Umar ibn al-Khaṭṭāb ordered one *jarīb*¹ of flour. It was kneaded into dough, baked into bread, and then soaked in (olive) oil. He then called thirty men, who ate this bread for lunch until they were full. In the evening he did the same again. After that, he said: 'Two *jarībs* suffice a man for a whole month.' He therefore granted each man, woman and slave an allowance of two *jarībs* per month.'²

Another tradition relates that

أخذ المدي بيد والقسط بيد: إني قد فرضت لكل نفس مسلمة في كل شهر مدي حنطة وقسطي زيت وقسطي خل، فقال رجل: والعبد، قال: نعم والعبد.³

[Sayyidunā 'Umar] took a measure of two *mudds* in one hand, and a *qist* (another measure of volume) in his other hand, and said: 'I have fixed (an allowance of) two *mudds* of wheat, two *qists* of oil and two *qists* of vinegar for every Muslim soul.' A man asked: 'And for slaves?' He replied: 'Yes, and for slaves.'

Then there is the famous saying of Sayyidunā 'Umar ﷺ:

لو مات جمل ضياعاً على شط الفرات لخشت أن يسألني الله عنه.

'Were a camel to die of hunger at the banks of the Euphrates, I would be fearful of Allah questioning me about it.'⁴

A few days before his *shahāda* (martyrdom) he is reported to have said:

لئن سلمني الله لأدع عن أرامل أهل العراق لا يحتاجن إلى أحد بعدي أبداً

'If Allah keeps me safe, I shall be sure to leave the widows of the people of Iraq in such a state that they will never have to depend on anyone after my time.'⁵

Imam Abū Yūsuf ﷺ relates the following incident, with his own chain of narration:

حدثنا عمر بن نافع عن أبي بكرة قال: مرت عمر بن الخطاب رضي الله عنه بباب

¹ A measure equal to about four *qafiz*.

² al-Balādhurī, *Futūh al-buldān*, p. 446; al-'Atā' fī zaman 'Umar bin al-Khaṭṭāb.

³ Ibid., p. 447.

⁴ Ibn Sa'd, *Tabaqāt*, vol. 3, p. 284; *Dhikr istikhlāf 'Umar*.

⁵ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Manāqib*, Hadith 3497.

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³ *Ibid.*, p. 447.

⁴ Ibn Sa'd, *Ṭabaqāt*, vol. 3, p. 284; *Dhikr istikhlaṭ 'Umar*.

⁵ al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-Manāqib*, Hadith 3497.

فَوْمٌ، وَعَلَيْهِ سَائِلٌ يَسْأَلُ: شِيخٌ كَبِيرٌ ضَرِيرُ الْبَصَرِ، فَضَرَبَ عَضْدَهُ مِنْ خَلْفِهِ، وَقَالَ: مِنْ أَيِّ أَهْلِ الْكِتَابِ أَنْتَ؟ قَالَ: يَهُودِيٌّ. قَالَ: فَمَا أَجَأَكَ إِلَيْيَّ مَا أَرَيْتَ؟ قَالَ أَسْأَلُ الْجُزِيَّةَ وَالْحَاجَةَ وَالسِّنِّ. قَالَ: فَأَخْذُ عُمْرَ بِيْدِهِ وَذَهَبَ بِهِ إِلَيْيَّ مِنْزَلَهُ فَرَضَخَ لَهُ بِشَيْءٍ مِّنَ الْمُنْزَلِ ثُمَّ أُرْسِلَ إِلَيْيَّ خَازِنَ بَيْتِ الْمَالِ فَقَالَ: أَنْظِرْهُ هَذَا وَضْرِبَاهُ؛ فَوَاللَّهِ مَا أَنْصَفْنَاهُ أَنْ أَكْلَنَا شَبَيْبَتَهُ ثُمَّ نَخَذَلَهُ عِنْدَ الْهَرْمِ، «إِنَّمَا الصَّدَقَاتُ لِلْفَقَرَاءِ وَالْمَسَاكِينِ»، وَالْفَقَرَاءُ هُمُ الْمُسْلِمُونَ وَهَذَا مِنَ الْمَسَاكِينِ مِنْ أَهْلِ الْكِتَابِ، وَوُضِعَ عَنْهُ الْجُزِيَّةُ وَعَنْ ضَرِبَاهُ، قَالَ أَبُو بَكْرَةَ: أَنَا شَهَدْتُ ذَلِكَ مِنْ عُمْرٍ وَرَأَيْتُ ذَلِكَ الشِّيخَ.

Sayyidunā ‘Umar ibn al-Khaṭṭāb ﷺ once passed by the door of a group of people, where he saw a person begging [saying]: ‘I am a blind old man.’ [‘Umar] touched his forearm from behind and asked him: ‘To which of the People of the Book do you belong?’ He replied: ‘I am a Jew.’ [‘Umar] then asked: ‘What has brought you to the condition in which I see [you]?’ He replied: ‘I am begging because of the *jizyah*, my own needs, and my old age.’ [‘Umar] took him by his hand, brought him to his home, and gave him something. Then he called for the treasurer of the *Bayt al-Māl* and told him: ‘Look out for people like him. By Allah, we will not have done justice if we consume [the earnings of] their youth and then forsake them in their old age. “Offerings of *sadaqah* are only for the poor (*fuqarā’*) and the destitute (*masākīn*)” (9:60). “The poor” means Muslims, while this man is one of the destitute from among the People of the Book.’ He then exempted [that man] and those like him from the *jizyah*.

The narrator further mentioned that Sayyidunā Abū Bakrah ﷺ said: ‘I witnessed this incident myself, and I also saw the old man.’¹

Imam Abū Yūsuf ﷺ further related the following about ‘Umar ibn ‘Abd al-‘Azīz ﷺ from the latter’s wife:

‘One night he wept the whole night long until it was time for the dawn prayer, and then he fasted. His wife reported:

فَقُلْتُ لَهُ: يَا أَمِيرَ الْمُؤْمِنِينَ، لَشَيْءٌ مَا كَانَ مِنْكَ مَا رَأَيْتَ الْلَّيْلَةَ؟ قَالَ: أَجَلُ، إِنِّي قَدْ وَجَدْتُنِي وَلِيَتْ أَمْرُ هَذِهِ الْأُمَّةِ أَسْوَدَهَا وَأَحْمَرَهَا. فَذَكَرَتِ الْغَرِيبُ الْقَانِعُ وَالْفَقِيرُ

الْمُحْتَاجُ وَالْأَسِيرُ الْمَقْهُوُعُ وَأَشْبَاهُهُمْ فِي أَطْرَافِ الْأَرْضِ. فَعَلِمْتُ أَنَّ اللَّهَ تَعَالَى سَأَلَنِي عَنْهُمْ وَأَنَّ مُحَمَّداً صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَجَّيَّجِي فِيهِمْ. فَخَفَتْ أَنْ لَا يَثْبَتْ لِي عَنْدَ اللَّهِ عَذْرٌ، وَلَا يَقُولُ لِي مَعَ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَجَّةٌ، فَخَفَتْ عَلَيَّ نَفْسِي.

‘I said: O Commander of the Believers, what has afflicted you that I saw you like this last night? He said: ‘Well, I found myself to be in charge of the dark- and light-skinned people of this *Ummah*. Then I thought of a stranger who has to make ends meet, a pauper in dire need, an oppressed prisoner, and similar people all over the land. I realised that Allah will ask me about them, and that Muhammad ﷺ will be my prosecutor in this case; and I was afraid that I will not have any excuse then, and that no argument will hold out in front of Muhammad ﷺ; and so I feared for myself.’¹

There are several anecdotes concerning ‘Umar ibn ‘Abd al-‘Azīz ﷺ. We shall content ourselves with those recounted by ‘Allāmah Ibn al-Jawzī ﷺ in his biography:

حَدَّثَنِي مَيْسِرُ بْنُ أَبِي الْفَرَاتِ، قَالَ كَتَبَتِ الْحَجَّةُ إِلَيْيَّ عَمْرُ بْنُ عَبْدِ الْعَزِيزِ يَأْمُرُ لِلْبَيْتِ بِكُسُوْةٍ كَمَا كَانَ يَفْعُلُ مِنْ كَانَ قَبْلَهُ. فَكَتَبَتِ إِلَيْهِمْ: إِنِّي رَأَيْتُ أَنْ أَجْعَلَ ذَلِكَ فِي أَكْبَادِ جَانِعَةٍ فَإِنَّهُ أَوْلَى بِذَلِكَ مِنَ الْبَيْتِ.

‘The doorkeepers of the Holy Mosque wrote to ‘Umar ibn ‘Abd al-‘Azīz, asking him to order a new covering for the [Sacred] House, as his predecessors had done. ‘Umar ibn ‘Abd al-‘Azīz wrote to them: ‘I consider it better to spend that [money] on hungry livers (i.e. people), for they are more in need than the [Sacred] House.’

قَالَ حَدَّثَنِي الْلَّيْثُ بْنُ يَحْيَىٰ بْنُ مَسْعُودٍ وَغَيْرِهِ أَنَّ عَمْرَ بْنَ عَبْدِ الْعَزِيزِ قَدَمَ عَلَيْهِ بَعْضَ أَهْلِ الْمَدِينَةِ، فَجَعَلَ يَسْأَلُهُ عَنْ أَهْلِ الْمَدِينَةِ، فَقَالَ: مَا فَعَلَ الْمَسَاكِينُ الَّذِينَ كَانُوا يَجْلِسُونَ فِي مَكَانٍ كَذَا وَكَذَا؟ قَالَ: قَدْ قَامُوا مِنْهُ يَا أَمِيرَ الْمُؤْمِنِينَ، وَأَغْنَاهُمُ اللَّهُ، وَكَانَ مِنْ أَوْلَئِكَ الْمَسَاكِينِ مَنْ يَبْعَثُ الْحَبْطَ لِلْمَسَافِرِينَ، فَالْتَّمَسَ ذَلِكَ مِنْهُمْ، فَقَالُوا: قَدْ أَغْنَانَا اللَّهُ عَنْ بَيْعِهِ بِمَا يَعْطِنَا عَمْرٌ.

Al-Layth ibn Yahyā ibn Mas‘ad and others related to me that once a person

¹ Abū Yūsuf, *Kitāb al-Kharāj*, pp. 259–260.

1 Abū Yūsuf, *Kitāb al-Kharāj*, p. 54 (introduction).

قوم، وعليه سائل يسأل: شيخ كبير ضرير البصر، فضرب عضده من خلفه، وقال: من أي أهل الكتاب أنت؟ فقال: يهودي. قال: فما الجأك إلي ما أري؟ قال أسؤال الجزية وال الحاجة والسن. قال: فأخذ عمر بيده وذهب به إلي منزله فرضخ له بشيء من المتزل ثم أرسل إلى خازن بيت المال فقال: أنظر هذا وضرباءه؛ فوالله ما أنصفناه أن أكلنا شبيته ثم نخذله عند الهرم، «إنما الصدقات للفقراء والمساكين»، والفقراء هم المسلمون وهذا من المساكين من أهل الكتاب، ووضع عنه الجزية وعن ضريائه، قال: قال أبو بكرة: أنا شهدت ذلك من عمر ورأيت ذلك الشيخ.

Sayyidunā ‘Umar ibn al-Khaṭṭāb ﷺ once passed by the door of a group of people, where he saw a person begging [saying]: ‘I am a blind old man.’ [‘Umar] touched his forearm from behind and asked him: ‘To which of the People of the Book do you belong?’ He replied: ‘I am a Jew.’ [‘Umar] then asked: ‘What has brought you to the condition in which I see [you]?’ He replied: ‘I am begging because of the *jizyah*, my own needs, and my old age.’ [‘Umar] took him by his hand, brought him to his home, and gave him something. Then he called for the treasurer of the *Bayt al-Māl* and told him: ‘Look out for people like him. By Allah, we will not have done justice if we consume [the earnings of] their youth and then forsake them in their old age. “Offerings of *ṣadaqah* are only for the poor (*fuqarā’*) and the destitute (*masākīn*)” (9:60). “The poor” means Muslims, while this man is one of the destitute from among the People of the Book.’ He then exempted [that man] and those like him from the *jizyah*.

The narrator further mentioned that Sayyidunā Abū Bakrah ﷺ said: ‘I witnessed this incident myself, and I also saw the old man.’¹

Imam Abū Yūsuf ﷺ further related the following about ‘Umar ibn ‘Abd al-‘Azīz ﷺ from the latter’s wife:

‘One night he wept the whole night long until it was time for the dawn prayer, and then he fasted. His wife reported:

فقلت له: يا أمير المؤمنين، لشيء ما كان منك ما رأيت الليلة؟ قال: أجل، إني قد وجدتني وليت أمر هذه الأمة أسودها وأحمرها. فذكرت الغريب القانع والفقير

المحتاج والأسير المقهوم وأشياههم في أطراف الأرض. فعلمت أن الله تعالى سألني عنهم وأن محمداً صلي الله عليه وسلم حجيبي فيهم. فخفت أن لا يثبت لي عند الله عذر، ولا يقوم لي مع محمد صلي الله عليه وسلم حجة، فخفت على نفسي.

‘I said: O Commander of the Believers, what has afflicted you that I saw you like this last night? He said: ‘Well, I found myself to be in charge of the dark- and light-skinned people of this *Ummah*. Then I thought of a stranger who has to make ends meet, a pauper in dire need, an oppressed prisoner, and similar people all over the land. I realised that Allah will ask me about them, and that Muḥammad ﷺ will be my prosecutor in this case; and I was afraid that I will not have any excuse then, and that no argument will hold out in front of Muḥammad ﷺ; and so I feared for myself.’²¹

There are several anecdotes concerning ‘Umar ibn ‘Abd al-‘Azīz ﷺ. We shall content ourselves with those recounted by ‘Allāmah Ibn al-Jawzī ﷺ in his biography:

حدثني ميسير بن أبي الفرات، قال كتبت الحجية إلى عمر ب عبد العزيز يأمر للبيت بكسوة كما كان يفعل من كان قبله. فكتبت إليهم: إني رأيت أن أجعل ذلك في أكباد جائعة فإنه أولي بذلك من البيت.

‘The doorkeepers of the Holy Mosque wrote to ‘Umar ibn ‘Abd al-‘Azīz, asking him to order a new covering for the [Sacred] House, as his predecessors had done. ‘Umar ibn ‘Abd al-‘Azīz wrote to them: ‘I consider it better to spend that [money] on hungry livers (i.e. people), for they are more in need than the [Sacred] House.’

قال حدثني الليث بن يحيى بن مسعود وغيره أن عمر بن عبد العزيز قدم عليه بعض أهل المدينة، فجعل يسأله عن أهل المدينة، فقال: ما فعل المساكين الذين كانوا يجلسون في مكان كذا وكذا؟ قال: قد قاموا منه يا أمير المؤمنين، وأغناهم الله، وكان من أولئك المساكين من يبيع الحبط للمسافرين، فالتمس ذلك منهم، فقالوا: قد أغنانا الله عن بيعه بما يعطينا عمر.

Al-Layth ibn Yahyā ibn Mas‘ad and others related to me that once a person

¹ Abū Yūsuf, *Kitāb al-Kharāj*, pp. 259–260.

²¹ Abū Yūsuf, *Kitāb al-Kharāj*, p. 54 (introduction).

from Madinah came to visit 'Umar ibn 'Abd al-'Aziz. [The latter] began asking about the people of Madinah, saying 'How are the poor people doing who used to sit in such and such place?' The visitor replied: 'Commander of the Believers, they have gone from there. Allah Most High has made them self-sufficient. Some of them used to sell *habaṭ* (probably an error for *haṭab*, meaning firewood)¹ to travellers. Then, when asked for it, they said: Thanks to what 'Umar grants us, Allah has freed us from the need to sell it.'

حدثني ابن زيد، عن عمر بن أسيد بن عبد الرحمن بن زيد بن الخطاب قال: إنما
ولي عمر بن عبد العزيز سنتين ونصفاً - ثلاثين شهراً - لا والله ما مات عمر بن
عبد العزيز حتى جعل الرجل يأتيانا بالمال العظيم فيقول: أجعلوا هذا حيث ترون
في القراء، ما يرجح حتى يرجع بماله قد أغنى عمر بن عبد العزيز الناس.

Ibn Zayd related to me from 'Umar bin Usayd ibn 'Abd al-Rahmān ibn Zayd ibn al-Khaṭṭāb that 'Umar ibn 'Abd al-'Azīz ruled for just two years and a half—thirty months—and that, by Allah, 'Umar ibn 'Abd al-'Azīz did not die before it happened that a man came to us with a huge quantity of wealth and said: 'Distribute this among the poor wherever you see [fit].' Yet he had to return with his wealth, for 'Umar ibn 'Abd al-'Azīz had freed the people from need².

The above discussion shows that one of the foremost aims of an Islamic government should be to ensure the just and equitable distribution and circulation of wealth among the people and to meet the needs of those who are unable to earn their livelihood, so that there remains not a single person who is not in a position to fulfil their own needs or those of their dependants.

GLOSSARY

Ahl al-Hall wa al-'Aqd. Literally, 'the people of unbinding and binding': those members of a Muslim community who are recognised by all as qualified to make judgements on matters including the question whether a given individual is fit to become the *Khalifah* or ruler.

Ahl al-Sunnah (more commonly, *Ahl al-Sunnah wa al-Jamā'ah*): a term for the collectivity of Sunnī Muslims who adhere by practice and/or intention to one of the four *madhhabs* or schools of fiqh and to mainstream doctrinal tenets ('aqā'id).

Ansār. Literally, 'Helpers': the Muslims of al-Madīnah who welcomed into their community the Prophet ﷺ himself and the *Muhājirūn* (Migrants), making enormous personal sacrifices.

Aqīdah (pl. 'aqā'id). Doctrine concerning matters of theology and other aspects of creed, or tenets of religion.

Asabiyah. Communal solidarity and cohesion.

Badr. A place between Makkah and Madīnah, site of the momentous battle in which the Muslims defeated an army of unbelievers far superior in numbers and weaponry.

Bay'ah. The pledging of allegiance to the authority of a ruler or master.

Bayt al-Māl. Literally, 'the House of Wealth': the state or public treasury, whose resources are to be used for the benefit of the needy and replenished primarily by payments of *Zakat*.

Caliph. A duly appointed leader or ruler of the Muslim community. See also *Khalifah*.

Companion. Someone who met or saw the Prophet ﷺ in person. See also *Sahābah*.

Dār al-Harb. Literally, 'the Domain of War': the term used in *fiqh* for a region that is under the rule of non-Muslims.

¹ *Habaṭ*, the word found here in the printed edition, is almost certainly a misprint for *haṭab*, 'firewood'; the meanings given for *habaṭ* and *habaṭa* in the dictionaries consulted by the author, such as *Tāj al-ārūs*, make no apparent sense in the present context.

² Ibn al-Jawzī, *Sīra wa manāqib 'Umar bin 'Abd al-'Aziz* (Beirut, n.d.), p. 94; chapter 17.

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Dār al-Harb. Literally, 'the Domain of War': the term used in *fiqh* for a region that is under the rule of non-Muslims.

Dār al-Salām. Literally, 'the Domain of Peace': the term used in *fiqh* for a region under the rule of Muslims.

Dhimmī. A non-Muslim living under Muslim rule. According to *Shari'ah*, the life, property and honour of any *dhimmī* who has paid the tax known as *jizyah* must be protected.

Fatwa (Arabic: *fatwā*). A ruling, issued by a qualified authority, on a question of *fiqh*.

Faqīh. A qualified expert in *fiqh*.

Fay'. The term used in *fiqh* for spoils of war acquired without fighting.

Fiqh. Literally, 'understanding', 'insight': the term used in Islam for jurisprudence, the science of deriving and applying Sacred Law (*Shari'ah*).

Hadith (Arabic: *Hadīth*, pl. *Aḥādīth*). Traditions, as transmitted by witnesses and narrators of proven reliability, relating words, actions, or matters approved or disapproved of by the Prophet ﷺ.

Hākim. The governor of a city and/or a region.

Istikhlāf. The practice of a ruler naming somebody as their designated or preferred successor (*walī al-'ahd*).

Ibādah. Literally, 'servanthood': an act of worship or service in obedience to Divine Will.

Istilā'. The process of coming to power through force and/or usurpation.

Jizyah. The poll-tax payable by a *dhimmī* (q.v.), in place of Zakat and in return for protection by the Muslim state.

Kalām. Literally, 'Discourse': the Islamic science of theology.

Khalīfah. Literally, 'Successor', 'Deputy': the ruler of the Muslim community; also, the role of every human being in their capacity as custodian of resources upon the Earth for which humanity is answerable to its Creator.

Kharāj. A form of taxation upon productive land.

Khawārij (sing.: *Khārij*). Literally, 'Outsiders': people who while professing to be Muslims put themselves outside the pale of the Faith by declaring anyone who disagrees with their belief to be non-Muslims who may lawfully be killed.

Khilāfah. The caliphate: the office and function of a *Khalīfah* (q.v.).

Khumus. The fifth part due as tax on the spoils of war.

Mu'āhid. Literally, 'party to a pact': a term used for a non-Muslim citizen of a Muslim state. See also *dhimmī*.

Mu'āmalāt (sing.: *Mu'āmalah*). Transactions between individuals, groups and/or communities.

Mudārāt. Amicable behaviour towards all kinds of non-Muslims, for the purpose of endearing Islam and Muslims to them, fulfilling a duty of a hospitality, and/or averting the danger of their harming the persons or interests of Muslims.

Mufassir (pl. *Mufassirūn*). A qualified specialist in *Tafsīr*, or commentary on the Qur'an.

Muḥaddith (pl. *Muḥaddithūn*). A qualified specialist in Hadith or Prophetic Traditions (q.v.).

Muhājir (pl. *Muhājirūn*). Literally, 'Migrant': the name given to those Muslims who migrated from Makka or elsewhere in order to join the Muslim community in al-Madīnah.

Mursal. The term used to denote a Hadith with an *Isnād* or chain of transmission that lacks the name of the Companion who heard or saw in person the Prophet's reported words or actions.

Mu'tazilites (Arabic: *Mu'tazilah*). A Muslim sect whose origins are traced to Wā'il ibn 'Aṭā' being said to have 'separated himself' (*i'tazala*) from the mainstream of Islamic theology. Amongst other things, Mu'tazilites believe that God is not the creator of evil in this world, and that the Holy Qur'an is created rather than being an aspect of pre-eternal Divine Knowledge.

Muwālāt. One of the forms of amicable relationship between groups or individuals, *Muwālāt* connotes profound affection and attachment. It is generally held that a Muslim should not have such feelings towards any non-Muslim.

Muwāsāt. One of the forms of amicable relationship between groups or individuals, *Muwāsāt*, entails a general of sympathy, well-wishing, and trying to be of benefit to others. This is permissible towards non-Muslims, except those who try to harm Muslims or their interests.

Sahābah (alternative form: *Aṣhāb*). The Arabic term for the Companions of the Prophet ﷺ, who met or saw him in person.

Shari'ah. The Sacred Law as derived from the Holy Qur'an and Prophetic Traditions and elaborated from principles by experts fully qualified in the science of *fiqh* (jurisprudence).

Shūrā. The principle and procedure, recommended in the Qur'an and Sunnah, of due consultation with appropriate individuals or groups before deciding on important matters.

Sunnah. The lived example of the Prophet Muhammad ﷺ, the Best of Mankind, as recorded in authenticated Hadiths.

Tahkīm. The practice of resorting to arbitration where there is a disagreement.

Taqwā. The quality of acting and speaking with caution and decorum in a manner that shows awareness that Allah ﷺ is constantly watching over our actions, words, thoughts, and intentions.

'Ushr. A tithe, or tax at a rate of one-tenth, upon the taxable assets of a non-Muslim.

Walā'. The relationship between a client or protégé (*mawlā*) and their protector, in a convention of Arab tribal society that was continued after the advent of Islam.

Wāli al-'ahd. The designated or preferred successor nominated by a ruler according to the process of *istikhlāf*.

Zakat (Arabic: *zakāh*). One of the five Pillars of Islam, Zakat is the obligatory alms, payable by all Muslims, of one-fortieth of their applicable assets above a fixed limit held for over one year.

WHAT DOES AN authentic Islamic government look like and how does it operate? In this concise but wide-ranging book the renowned scholar Mufti Muhammad Taqi Usmani provides an authoritative survey of the guidance given by the canonical Islamic sources in matters of politics. In six chapters he examines the role and conduct of politics and political activity in Islam in the light of the Qur'ān and the Prophetic Sunnah; guidelines for the process of forming a government; rules and procedures for running a government; the Islamic injunctions concerning defence and foreign policy; and the circumstances in which it may become permissible to remove a ruler or government from office. The book is rounded off with two articles by the same author, on political affairs with specific reference to Pakistan. *Islam and Politics* is essential reading for those seeking a readable and reliable account of the basic teachings of Islam concerning politics and government.

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